

CITY OF NEW ORLEANS



REQUEST FOR QUALIFICATIONS

FOR

**CITYWIDE ROSTERS FOR ARCHITECTURAL AND
ENGINEERING (A/E) SERVICES FOR THE
DEPARTMENT OF PUBLIC WORKS FOR FISCAL
YEARS 2021-2023**

RFQ NO. 994

RELEASE DATE: 01/20/2021

SUBMISSION DEADLINE: 02/19/2021

KEY REMINDERS TO PROSPECTIVE RESPONDENTS

1. **READ THE SOLICITATION IN ITS ENTIRETY.**
2. **CONTACT THE DESIGNATED PURCHASING OFFICIAL ONLY.**
3. **CHECK THE SUPPLIER PORTAL PERIODICALLY.**
4. **TAKE ADVANTAGE OF THE QUESTION AND ANSWER PERIOD.**
5. **PROVIDE COMPLETE ANSWERS AND DESCRIPTIONS.**
6. **REVIEW THE RFQ AND YOUR PROPOSALS BEFORE SUBMITTING.**
7. **SUBMIT YOUR PROPOSAL ON TIME.**

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SECTION 1 – DEFINITIONS

“*BRASS*” means Budget, Requisition, and Accounting Services System.”

“*City*” means the City of New Orleans.

“*Close Event*” means the date and time at which BRASS prohibits Respondents from submitting a response to the solicitation.

“*DBE*” means Disadvantage Business Enterprise.

“*Event*” means the solicitation (RFQ, RFP, ITB, ITQ) that the Bureau of Purchasing created to release it on the Supplier Portal of BRASS.

“*FEMA*” means the Federal Emergency Management Agency.

“*HUD*” means the U.S. Department of Housing and Urban Development.

“*OSD*” means the City’s Office of Supplier Diversity.

“*Open Event*” means the date and time at which the Event is released to the public in the Supplier Portal of BRASS.

“*Purchasing Conference Room*” means the room adjacent to the Bureau of Purchasing located on the 4th floor of City Hall at 1300 Perdido Street, New Orleans, Louisiana 70112.

“*Respondent*”, “*Respondents*” or “*a respondent*” means a person or entity who responds to the RFQ.

“*RFQ*” means the present request for qualifications.

“*SBE*” means Small Business Enterprise as defined by the U.S. Small Business Administration.

“*SLDBE*” means State and Local Disadvantage Business Enterprise.

SECTION 2 – OVERVIEW

2.1 Introduction

The Department of Public Works’ mission is to construct and maintain the highest quality of safe and sustainable transportation facilities for users of vehicular, bicycle, pedestrian and rail transportation, in order to improve the quality of life and create opportunities for economic development for all New Orleanians.

The Department of Public Works is composed of 5 divisions (maintenance, parking, traffic, engineering and streetlights) responsible for maintaining approximately 1,547 miles of streets (21,000,000 square yards of pavement) and 149 bridges in the City. This system includes 72,000 catch basins and approximately 8,200,000 linear feet of drainage lines.

2.2 Background

The City of New Orleans Department of Public Works (DPW) implements various construction projects throughout the City during the course of a given year. These projects range in size and duration and can be categorized by assets such as streetlights, pavement, drainage, water, sewerage, green infrastructure, bike paths, potholes, and signage.

There is a need to accurately track and manage all projects on one database to enable reporting across multiple programs and funding sources and assure that standards are being consistently adhered to during the construction phase of these projects.

2.3. Purpose

The City's Department of Public Works ("DPW") seeks to identify and select qualified firms that may be engaged over the next 48-72 months to establish citywide rosters of qualified firms to provide the City with professional design, engineering, construction management and inspection services, green infrastructure, and/or environmental services to support the delivery of projects to assess, design, manage, build and/or repair streets, sidewalks, bikeways, streetlights, traffic signals, drainage systems, bridges, utilities, and other public works infrastructure features city-wide, as further described in the RFQ.

2.4. Roster Users

The Department of Public Works will be the primary user of the rosters resulting from the RFQ.

Other city departments, board, commissions, and agencies may utilize the applicable roster processes to contract with a firm qualified under this RFQ.

Those users must abide by the procurement and contracting processes established by the RFQ.

2.5. Disciplines

Rosters will be created for the following disciplines:

1. Design and Engineering for Roadways and Drainage
2. Design and Engineering for Bridges
3. Construction Management
4. Green Infrastructure Design and Engineering
5. Environmental Engineering and Services
6. Resident Inspection

2.6. Statement of Qualifications Needed

Respondents are invited to submit a separate Statement of Qualifications ("SOQ") for any of the disciplines for which a respondent has qualifications.

Respondents will submit a SOQ that includes an overview of their expertise, resources, equipment, facilities, and experience related to the services identified in this RFQ.

In additions respondents will provide at least 5 references with an e-mail address and active phone number for use in contacting the reference.

2.7. Scope of Services

Projects to be awarded may be associated the minor roadways, major roadways, bridges, drainage, construction inspection, green infrastructure, environmental services and/or as identified by staff. See Section 13 for Attachments A.1, A.2, A.3, A.4, A.5, and A.6.

It is of the utmost importance for the selected firm to be able to provide time sensitive support for infrastructure design and construction projects on short notice (24 hours) or within the timeframe agreed upon with the DPW Engineering staff for emergency situations.

All work will be done in close coordination with DPW's Engineering staff.

2.8. Minimum Qualifications

All engineering firms or teams of Prime and Subconsultant firms selected under this RFQ must meet the following minimum qualifications:

1. At least one of the principals of the firm(s) must be professionally competent in the field or fields of expertise required for the project.
2. At least one principal or responsible member of the firm(s) shall have had a minimum of 5 years' experience in responsible charge of the field or fields involved.
3. At least one of the principals of the firm(s) must be licensed or registered by the appropriate Louisiana licensing or professional board.

2.8.1. Design and Engineering for Roadways and Drainage

All requirements of Louisiana Professional Engineering and Land Surveying ("LAPELS") Board must be met at the time of submittal.

- A. The Prime Consultant under consideration shall have at least one principal who is a registered professional Civil Engineer licensed to work in the State of Louisiana with a minimum of 10 years of experience on municipal infrastructure projects.
- B. The Prime Consultant must also employ on a full-time basis, or through the use of SubConsultant(s), one Professional Civil Engineer registered in the State of Louisiana with a minimum of 5 years of experience in the following project categories: local roadway systems, DOTD roadways, FHWA roadways, and storm sewer systems. One professional Civil Engineer may be used for all of the listed project categories if qualified.
- C. Prime Consultant under consideration shall have knowledge of and experience with federal grant programs, such as CDBG and FEMA, HMGP, regulations, policies, and procedures.

2.8.2. Design and Engineering for Bridges

All requirements of Louisiana Professional Engineering and Land Surveying (LAPELS) Board must be met at the time of submittal.

- A. The Prime Consultant under consideration shall have at least one principal with a minimum of 10 years of experience in structural engineering of bridges.
- B. The Prime Consultant must also employ on a full-time basis, or through the use of SubConsultant(s), one Professional Civil Engineer registered in the State of Louisiana with a minimum of 5 years of experience in a minimum of three of the following project categories: local roadway systems, DOTD roadways, FHWA roadways, bridges, and storm sewer systems. One professional Civil Engineer may be used for all of the listed project categories if qualified.
- C. Prime Consultant under consideration shall have knowledge of and experience with federal grant programs, such as CDBG and FEMA, HMGP, regulations, policies, and procedures.

2.8.3. Construction Management

The following requirements must be met at the time of submittal:

- A. At least one Principal of the Prime-Consultant must be a Professional Engineer registered in the State of Louisiana.
- B. The Prime-Consultant must employ on a full-time basis, one Professional Civil Engineer, registered in the State of Louisiana, with at least ten years of experience in responsible

charge of managing roadways, drainage, water, and sewerage construction project and a corresponding support staff.

- C. Prime Consultant under consideration shall have knowledge of and experience with federal grant programs, such as CDBG and FEMA, HMGP, regulations, policies, and procedures.

2.8.4. Green Infrastructure Design and Engineering

- A. Provide a brief statement describing and highlighting the Consultant Team's specialized experience and expertise.
- B. Clearly demonstrate how the team meets each of the Minimum Qualifications, naming the firm and key personnel meeting each qualification, defining years of experience with each skill, and listing applicable project examples.
- C. Please also describe how the team meets any recommended experience or other relevant experience, with emphasis on the provision of services previously provided to governmental organizations with similar requirements to those contained in Attachment "A.4" Needed Services.
- D. Address each key personnel's professional qualifications and experience; their reputation and professional integrity and competence; their knowledge of holistic resilience strategies including green building and/or green infrastructure; their experience designing and overseeing implementation of features; examples of successful community and government partnerships built around resilience and stormwater features; experience creating benefit-cost analysis and innovative, sustainable financing, funding, and revenue creation schemes to ensure that operations and maintenance ("O&M") requirements and the full range of community and environmental co-benefits are realized; and knowledge of and experience with federal grant programs, such as CDBG and FEMA, HMGP, regulations, policies, and procedures
- E. Resumes of key personnel describing the experience, expertise, and domicile of key project team personnel that will be assigned to the project are limited to maximum two pages per individual.

2.8.4.1. Minimum Personnel Requirements

Paragraphs i. through iii. cannot be met by the same individual.

- i. Drainage and hydraulic structure design services: At least one professional civil engineer or registered landscape architect shall have a minimum of ten years of experience in hydraulic and green infrastructure project design, such as experience providing complex engineering and landscape architecture services for hazard mitigation projects for government clients, including but not limited to detention and filtration of stormwater, open channel and pipe flow drainage systems, created wetlands structures, bioretention, and design of hydraulic control structures.
- ii. Hydraulic and hydrologic ("H&H") modeling services: Proposed personnel shall have capability to perform hydraulic and hydrologic modeling services using SWMM Modeling to validate designed rainfall runoff retention rates and assess impacts of multiple rainfall/storm events on a given project or area. Reviewed 6-15-2020 KW.
- iii. Roadway design: At least one professional civil engineer or shall have five years of experience in roadway design, including traffic analyses, pavement structural design, use of geosynthetics, geometric design, line and grade analyses, pavement marking,

- intersection improvements, pedestrian and bicycle lanes or paths, excavation and embankment, and traffic control devices.
- iv. Vegetation Selection and protection: Personnel shall possess understanding and experience with selecting appropriate native/adaptive vegetation, trees, etc.
 - v. Ability to perform benefit costs analyses: Proposed personnel shall have experience calculating a life cycle cost benefit analysis, including but not limited to calculation of flood reduction benefits to project costs as outlined in 44 CFR 206.434(c)(5).
 - vi. Experience delivering complex infrastructure, open space, and/or capital projects for government clients: Proposed personnel shall have experience working for government clients to deliver complex projects involving coordination across multiple departments and agencies, to include the Department of Public Works (“DPW”), the Sewerage and Water Board of New Orleans (the “Board”), the City Planning Commission (“CPC”) and other key agencies.

2.8.4.2. Sealing

Respondents are advised that all plans, specifications, drawings, and reports delivered under this contract shall be prepared under the responsible charge of, and sealed by, a professional engineer or a landscape architect licensed in the state of Louisiana. Licensure requirements for firms and individuals can be found at www.lapels.com and www.ladaf.state.la.us.

2.8.4.3. Recommended Experience

The following are additional recommended experiences and expertise:

- Experience leading multidisciplinary teams through integrated project design and delivery processes,
- Team experience collaborating successfully on similar past projects,
- Expertise delivering innovative design projects,
- Understanding of and experience with the challenges associated with delivering sustainable water management projects in the New Orleans area, including its unique topography, soil conditions, condition/capacity of existing drainage system, amount of rainfall received annually, and native vegetation,
- Experience integrating environmental and social concerns into the design and development process,
- Experience with federal grant programs such as FEMA and CDBG,
- Experience developing life cycle cost benefit analyses, and
- Experience developing Operations & Maintenance Plans for public sector design projects.

2.8.5. Environmental Consulting Services

- A. Proposers should indicate their experience and proficiency in each of the tasks listed in Attachment A.5 and list specialized certifications held to perform such tasks. Lack of experience in one or more tasks will not disqualify a proposer from being selected as a provider of other tasks. Respondent should indicate the firm’s ability to respond to emergency task orders and indicate whether a firm representative could be available to arrive at a project site within Orleans Parish within 60 minutes from the time called upon.

- B. Proposers should demonstrate their ability to stay within established budgets and timelines and provide professional references for each case study example provided. Case studies should include the overall project budget, their portion of the overall budget and project size (area).
- C. Prime Consultant under consideration shall have knowledge of and experience with federal grant programs, such as CDBG and FEMA, HMGP, regulations, policies, and procedures.

2.8.6. Resident Inspection

The following requirements must be met at the time of submittal:

- A. At least one Principal of the Prime-Consultant must be a Professional Engineer registered in the State of Louisiana.
- B. The Prime-Consultant must employ on a full-time basis, or through the use of a Sub-Consultant(s), a minimum of two DOTD Certified Inspectors, one with a minimum of 5 years' experience in Road and Bridge Construction. Inspectors may only inspect activities in which they hold an active DOTD certification. The major activities listed below require certified inspectors:
 - 1. Embankment and Base Course
 - 2. Structural Concrete

NOTE: All field inspectors must have completed the Work Zone Traffic Control Technician and Flagger course. All field senior technicians and engineers must have completed the Traffic Control Supervisor course. Certifications of Compliance must be submitted with and made part of the Consultants.

- C. Prime Consultant under consideration shall have knowledge of and experience with federal grant programs, such as CDBG and FEMA, HMGP, regulations, policies, and procedures.

2.9. Performance Evaluation

The City will memorialize performance evaluation criteria and schedules in the executed contract.

SECTION 3 - DBE

3.1. In General

The requirements of the City's DBE Program apply to the RFQ and the subsequent procurement process for the small project roster and major project roster. See Section 7 for more information on said rosters.

OSD can determine in good faith that Respondents' failure to carry out these requirements will be deemed a material breach of the agreement executed with the City.

This material breach may result in the termination of the agreement executed with the City and/or the pursuit of any other remedies available to the City under any applicable law, ordinance, or rule, including, but not limited to those set forth in the City's Policy Memorandum for the DBE Program.

OSD may determine that the material breach results in the disqualification of a qualified respondent from the citywide roster.

3.2. DBE Goal

A DBE contract goal of 35 percent has been established for this RFQ and its subsequent selection processes.

3.3. Acknowledgment of the DBE Program

Respondents must submit with their proposal the Affidavit to Acknowledge the DBE Program. See Section 13 for the relevant Attachment to the RFQ.

3.4. DBE Interest

The Bureau of Purchasing and OSD seek to offer the opportunity to DBE and SLDBE, SBEs, and other certified minority, women, disabled veteran owned businesses to submit their interest in participating to the RFQ as a prospective subcontractor to a respondent or to jointly propose as a prospective partner with a respondent, or both.

DBE and other certified diversity entities must complete a questionnaire to express their interest. Follow the below link to submit your interest:

- <https://forms.office.com/Pages/ResponsePage.aspx?id=hfTLCLccAkqaIQ3ZtFuf90s12RkxNB5KnaGW8hYN33NUQlo4WkhHWE5YQ1lCQjZHUUZBOEhMMzg1UC4u>

OSD will present the results of the questionnaire for the RFQ during the Pre-Submittal Conference.

IMPORTANT: Submit your interest on or before the deadline identified under Section 4.1. Otherwise, OSD will not be able to present it during the Pre-Submittal Conference.

The Bureau of Purchasing will post said results via an addendum to the RFQ.

3.4. DBE Opportunities

The City expects Respondents to ensure that every effort is made to meet DBE utilization goals.

OSD offers the opportunity to Respondents to submit subcontracting opportunities on its DBE Opportunities Page. Said page can be found at:

- [Economic Development - Supplier Diversity - Opportunities - City of New Orleans \(nola.gov\)](http://nola.gov/Economic-Development-Supplier-Diversity-Opportunities)

3.5. Point of Contact

Respondents shall direct questions related to DBE compliance prior to the Submission Deadline to:

- By email: Supplierdiversity@nola.gov
- By telephone: 504-658-4220
- In writing or in-person: Office of Supplier Diversity
1340 Poydras Street, 10th Floor,
New Orleans, LA 70112

SECTION 4 – ANTICIPATED TIMETABLE

4.1. Dates

Release/Open Event (Cone of Silence Begins) 1/20/2021

Deadline for DBE Interest 2/3/2021 at 4:00 PM CST

Pre-Submittal Conference	<i>2/9/2021 at 2:00 PM CST</i>
Deadline for Submitting Questions	<i>2/10/2021 at 5:00 PM CST</i>
Submission Deadline/Close Event	<i>2/19/2021 at 4:00 PM CST</i>
Evaluation by Selection Committee	<i>On or about 3/2/2021</i>
Notification	<i>On or about 3/5/2021</i>

4.2. Meetings

The pre-submittal conference meeting and the selection committee meeting are public meetings. The Bureau of Purchasing encourages Respondents to attend said meetings.

4.3. City Calendar

The Bureau of Purchasing posts the dates and times of the public meetings connected to the RFQ on the calendar of the City.

The Bureau of Purchasing encourages Respondents to subscribe to the calendar.

The City calendar can be found at:

- [Calendar - City of New Orleans \(nola.gov\)](https://nola.gov) .

4.4. Pre-Submittal Conference

The Bureau of Purchasing holds pre-submittal conferences either in the Purchasing Conference Room or via a teleconference call to the extent permitted by law.

4.5. Selection Committee Meeting

The Bureau of Purchasing makes every effort to maintain the above date of the selection committee meeting.

However, from time to time, the Bureau of Purchasing may need to reschedule the said meeting for reasons which include, but not limited to, request(s) from committee member(s) to have additional time for review, an unexpected calendar conflict of one or more committee member, an unforeseen emergency, etc.

4.6. Questions

Respondents must submit substantive questions to the Designated Purchasing Official either by email (cdmorgan@nola.gov) no later than the deadline set forth in Section 4.1.

The Bureau of Purchasing encourages Respondents to use BRASS for the submission of your question(s).

If submitted by email, Respondent must provide at minimum: RFQ number, first and last name of requester, name of company, business address and telephone number

The Designated Purchasing Official will issue a response to any inquiry if it deems it necessary, by written addendum to the RFQ.

Respondent's question(s) submitted after the deadline may not be reviewed for inclusion in an addendum to the RFQ.

The Designated Purchasing Official will not respond to substantive questions submitted verbally either by telephone or in person or both outside of the scheduled meetings.

4.7. Cone of Silence

From the release of the RFQ until the award, there is a prohibition on communication by respondents (or anyone on their behalf) with the City's staff, the Mayor and staff, council members and staff, members of the selection committee members and elected officials.

The Bureau of Purchasing calls this prohibition the "Cone of Silence."

This does not apply to oral communications at pre-submittal conferences, oral presentations before selection committees, contract negotiations, or communications in writing at any time with any city employee or elected official regarding matters not concerning this RFQ.

BREAKING THE CONE OF SILENCE, IF PROVEN, MAY RESULT IN A DISQUALIFICATION OF YOUR RESPONSE.

SECTION 5 - EVALUATION

5.1. In General

The selection committee will evaluate responses based on the technical criteria established under this section.

A respondent may receive the maximum points, a portion of this score, or no points at all, depending upon the merit of its response, as judged by the selection committee in accordance with:

During the review of any submission at any time (including in the event of a shortlist), the selection committee may:

- Conduct reference checks relevant to the solicitation to verify all information, and rely on or consider any relevant information from such cited references or from any other sources in the evaluation of the submissions,
- Seek clarification of a submission or additional information from any or all respondents and consider same in the evaluation of submissions,
- Waive any requests or requirements if such waiver is in the best interest of the City, and
- Request interviews/presentations with any, some or all respondents to clarify any questions or considerations based on the information included in submission.

5.2. Technical Criteria for the RFQ

The Selection Committee will use the following criteria to evaluate the proposals submitted by Respondents to qualify for a discipline and a roster:

Title	Description	Points
Relevant Performance Past	<ul style="list-style-type: none">• Demonstrated experience in projects dealing with a wide variety of construction activities for administrative and industrial/public works type facilities. Projects shall include architecture and engineering services rendered in support of studies, new construction, renovations & alterations, and maintenance and repair. Past results of the firm as demonstrated by its performance evaluations on government work shall be provided for each project. Responsiveness	25

	<p>will be evaluated by demonstrated past performance on similar projects with governmental agencies and private industry in terms of cost control, quality of work, and compliance with performance schedules on similar size and scope projects.</p> <ul style="list-style-type: none"> • Include specific personnel and subconsultants involved with these past projects. • Demonstrate past performance on contracts with public agencies and private industry in terms of cost control and compliance with performance schedules. 	
Specialized Experience and Technical Competence	<ul style="list-style-type: none"> • Identify individual and team specialized experience and technical competence in similar work within the past 5 years. • Demonstrate familiarity and experience with local codes, permit procedures and regulations. 	30
Professional Qualifications and Technical Competence of Team Members and the Depth of the Firm	<ul style="list-style-type: none"> • Active professional registration/affiliations of team members. • Individual team members' and sub consultants' role. • Capability to provide qualified back-up staffing for key personnel to ensure continuity of services and ability to surge to meet unexpected project demands. • Provide information comparing original engineered construction cost estimates (aka: engineer's estimates) to bid costs to final construction costs. • Demonstrate how construction costs, schedules and construction budgets have been managed on recently awarded public contract. Use examples of actual projects of similar size and type. 	30
Past DBE Performance	<ul style="list-style-type: none"> • Firm's past performance on meeting DBE goals and complying with the DBE policy. • Firm's technical assistance and supportive services designed to increase participation and build capacity in the DBE community. 	15
	Total Points	100

5.3. Minimum Score

A respondent must obtain a minimum score of 75 points out of 100 maximum score to be considered qualified for the above services.

If a respondent fails to receive the minimum score of 75 points, the proposal will not be eligible to qualify for a discipline and a roster.

5.4. Past DBE Performance Evaluation

This criterion consists of points that will be deducted for poor performance history with adhering to the DBE program.

Points may be deducted for the following reasons: not meeting the committed DBE goal; switching DBEs or reduces work committed to DBEs; inconsistency with reporting requirements; lack of cooperation with on-site monitoring by the Office of Supplier Diversity; history of failing to pay DBEs in a timely manner; history of insufficient Good Faith Efforts (“GFE”). This list is not exhaustive.

Respondents with no past DBE performance with the City, the Sewerage and Water Board of New Orleans, the New Orleans Aviation Board shall not have any points deducted.

5.5. Technical Criteria for the RFP

When the selection of a firm is subject to a competitive proposal process, the request for proposal will contain the evaluation criteria.

SECTION 6 – SELECTION

6.1. Selection Committee – RFQ - Composition

The Chief Procurement Officer must establish selection committees with relevant subject-matter expertise in reviewing and evaluating responses to the RFQ.

As per the applicable executive order, the selection committee will consist of the following individuals:

- The Chief Administrative Officer, or designee,
- The Chief Financial Officer, or designee,
- The manager of the User Entity requesting the service, or designee,
- The employee who will manage and monitor the contract, and
- A professional from within local government who possesses expertise in the relevant field.

6.2. Selection Committee – Competitive Proposal Process – Composition

When the Bureau of Purchasing follows a competitive proposal process, the selection committee will consist of the following individuals:

- The Chief Administrative Officer, or designee,
- The Chief Financial Officer, or designee,
- The manager of the User Entity requesting the service, or designee,
- The Director for the Office of Supplier Diversity, or designee, and

- The Mayor's Office or designee.

6.3. Selection Committee – Grading

The members on the selection committee shall either complete the numerical grading or use the wholly qualitative evaluation criteria.

6.4. Selection Committee – Non-Voting Member

The Selection Committee, through a majority vote, may add one non-voting member to the committee who has expertise in the relevant field.

SECTION 7 – ROSTERS

7.1. In General

The selection committee will qualify a respondent withing a specific discipline and then determine whether the respondent qualifies for the Small Project Roster or the Major Project Roster.

The Bureau of Purchasing will notify the successful and unsuccessful Respondents.

7.2. Application to a Discipline and a Roster

Respondents must submit a form to show which discipline and roster they apply to.

The Bureau of Purchasing provides a Roster Application Form. See Section 13 for Attachments to the RFQ.

7.3. Small Project

7.3.1. Definition

“Small Project” means a project with a total dollar amount of fee of \$500,000 or less.

7.3.2. Small Project Roster

For each discipline, the selection committee will qualify firms as “Small Project Roster.” The ranking of the qualified firms will determine the order for the “Rotation” process (See Section 7.3.3.a. below).

The City creates the Small Project Roster in an effort to offer prime contracting opportunities to smaller capacity firms, including DBE and SLDBE firms, SBEs, and other certified minority, women and disabled veteran owned businesses.

7.3.3. Selection Processes

When a department identifies a Small Project, the Bureau of Purchasing will exercise one of the two processes described below.

The use of a process will depend on whether the project requires one or more disciplines.

There are 2 types of processes:

- a. **Rotation**: If the project requires ONE discipline, the Bureau of Purchasing issues a request for proposals to the qualified firm which is ranked next to receive said request. The Bureau of Purchasing provides the proposal to the department and OSD for review and approval. Both department and OSD must approve the proposal. When approved, the Bureau of Purchasing notifies the qualified firm and the firm which will receive the next request.

- b. Competitive Proposal: If the project requires multiple disciplines, the Bureau of Purchasing issues a request for proposals to all firms qualified in those disciplines. The Bureau of Purchasing convenes a selection committee which reviews and recommends the selection of the project for one firm.

IMPORTANT: Other circumstances may lead the Bureau of Purchasing to follow the Competitive Proposal process rather than the Rotation process. Those circumstances include, but not limited to, the funding source of the project or the complexity of the project.

7.4. Major Project

7.4.1. Definition

“Major Project Roster” means a project with a total dollar amount of fee of \$500,000.01 or more.

7.4.2. Selection Process

When a department identifies a Major Project, irrespective of the number of disciplines involved, the Bureau of Purchasing will follow a competitive proposal process like the one set forth under Section 6.2.1.3.b.

SECTION 8 – CONTRACT

8.1. Post-Selection Notifications

Once a proposal is approved (See Rotation process) or the selection committee recommends a proposal (See Competitive Proposal process), the Bureau of Purchasing notifies the qualified firm by an intent to award letter.

The Bureau of Purchasing will also notify the firm which will receive the next request (Rotation process) or the unsuccessful firms (Competitive Proposal process).

8.2. Negotiation and Execution of Contract

Once the negotiations are complete and the selected firm provides the required information and documents (examples: tax clearance form, proof of signing authority, proof of good standing with the State of Louisiana, etc.), the City and the selected firm executes a written contract.

The City will publish a copy of the fully executed contract on the City’s Supplier Portal.

8.3. Contract Administration

The executed contract with the selected firm identifies the department responsible for administering it. Said department will be notably responsible for monitoring the performance of the contractor.

8.4. Contract Amendment and/or Time Extension

8.4.1. DBE Compliance

Prior to amending and/or extending the contract for time with the contracted firm, said firm must be compliant with its committed DBE plan.

Failure to comply can constitute cause for termination of the contract and disqualification from the roster(s) and/or RFQ.

8.4.2. Performance Evaluation

Prior to amending and/or extending the contract for time with the contracted firm, said firm must perform in accordance with the scope of work set forth in the contract.

Failure to comply can constitute cause for termination of the contract and disqualification from the roster(s) and/or RFQ.

SECTION 9 – DISQUALIFICATION

9.1. Causes

The Bureau of Purchasing can disqualify a firm from a roster for cause which include:

- a. Failure to comply with DBE requirements,
- b. Failure to submit a proposal in response to a request for proposal, or
- c. Failure to perform the scope of work.

Other circumstances can constitute cause for disqualification.

9.2. Process

The contract administrator will notify the contractor to discuss and resolve the documented failure(s). OSD will participate in the meeting if the failure to perform relates to the DBE requirements.

The contract administrator and the contractor will memorialize the course of action to cure the failure(s).

If the contractor continues to fail, the contract administrator can submit a request to the Bureau of Purchasing proposing to disqualify Contractor from the applicable roster. The contract administrator must justify the request with supporting documentation.

9.3. Informal Hearing

Following the receipt of a disqualification request, the Bureau of Purchasing will schedule an informal hearing with an administrative hearing officer.

The Bureau of Purchasing will notify the contract administrator and the contractor of the date, time, location and information about the process.

During the hearing, the contractor and the contract administrator will have the opportunity to present their arguments.

The administrative hearing officer will render a decision within 5 business days from either the date of the informal hearing or from the date set by the administrative hearing officer for post-hearing written submissions.

9.4. Consequences

If the administrative hearing officer decides to confirm the disqualification, the City can terminate the contract for cause and said firm will be barred from submitting a proposal to the subsequent request for qualifications.

9.5. Procedure

The Bureau of Purchasing will maintain the procedure and provide it upon request to the Chief Procurement Officer.

SECTION 10 – SUBMISSION

10.1. In General

Respondents can submit 1 digitally signed response in PDF format by:

- Email to the Designated Purchasing Official, or
- Responding to the event in BRASS.

The Bureau of Purchasing encourages Respondents to use BRASS for the submission of your response.

NOTE: If Respondent encounters a problem to submit a response by email or in BRASS, Respondent must notify the Designated Purchasing Official immediately and coordinate with said official for an alternative method of submission (in person or by courier).

Respondent must obtain written approval from the said official prior to submitting the response via an alternative method.

The City will not accept qualifications submitted by fax.

10.2. Designated Purchasing Official

Respondents must direct response, correspondence, and other communications regarding the RFQ to the following Designated Purchasing Official:

- Title (Mr., Mrs., Ms.), First and Last Name: Mrs. Cheryl Morgan
- Email address: cdmorgan@nola.gov
- Office Telephone Number: 504-658-1563
- For in-person or mailing: Attn: Mrs. Cheryl Morgan
City of New Orleans
Bureau of Purchasing
1300 Perdido Street, Suite 4W07,
New Orleans, Louisiana 70112.

10.3. Contents

The City requires that the submission be organized in the manner specified below to achieve a uniform review process and obtain the maximum degree of comparability.

The submission shall include the following:

A. Cover Sheet

- Show the RFQ number and subject, the name of your firm, address, email address, telephone number(s), name of contact person and date.

B. Table of Contents

C. Transmittal Letter

- By signing the letter, the Respondent certifies that the signatory is authorized to bind the Respondent.
- The letter should include:
 - A brief statement of the Respondent's understanding of the scope of the services to be performed,
 - A confirmation that the Respondent meets the minimum requirements specified in the qualifications section above,

- A confirmation that the Respondent meets the appropriate state licensing requirements to practice in the State of Louisiana,
- A confirmation that the Respondent has not had a record of substandard work within the last five years,
- A confirmation that the Respondent has not engaged in any unethical practices within the last five years,
- A confirmation that, if awarded the contract, the Respondent acknowledges its complete responsibility for the entire contract, including payment of all charges resulting from the contract, and
- Any other information that the Respondent feels appropriate.

D. List of projects involving DBE participation.

- Describe the projects within the last 3 years with the name of the project, the name of the public agency, the date of the project, and the goal achieved.

E. Required Forms:

- Roster Application Form,
- SF330 for each discipline that respondent seeks to be qualified for,
- Affidavit to Acknowledge DBE Program for Prime,
- Affidavit of Conflict of Interest Disclosure for Prime and Sub-Consultant, and
- Affidavit for Compliance with Hiring Requirement for Prime.

10.4. Receipt

THE DESIGNATED PURCHASING OFFICIAL MUST RECEIVE YOUR RESPONSE BEFORE THE DEADLINE INDICATED UNDER SECTION 4.1.

The City will NOT accept submissions delivered after the deadline.

10.5. Time Stamp in BRASS or Email

If Respondent intends to submit the response in BRASS, the time stamp of receipt is generated by BRASS.

Note that BRASS prohibits any submission on and after the date and time the RFQ closes.

If Respondent intends to submit the response by email to the Designated Purchasing Official, the date and time of the email received by the Designated Purchasing Official constitutes the time stamp of receipt.

The date and time of the email sent by Respondent does NOT constitute a proof of receipt.

IMPORTANT:

- The Bureau of Purchasing encourages Respondents to submit a response at least 3 hours before the deadline set forth in the RFQ.
- The Bureau of Purchasing encourages Respondents to confirm with the Designated Purchasing Official that the response was received timely. If there is a high volume of submissions, the confirmation may take 1 or 2 business days.

10.6. Alternative Method of Submission

If the Designated Purchasing Official approved an alternative method of submission such as courier service, Respondent remains responsible for ensuring that its courier service provider can deliver the proposal prior the deadline with a proof of delivery.

The City will not credit delivery claims without a written proof of delivery.

Failure to meet the deadline, irrespective of the mode of delivery, shall result in the rejection of the proposal.

10.7. Failing to Comply

The Designated Purchasing Official will notify Respondent in writing that the proposal is non-responsive if:

- Respondent failed to submit it timely, or
- Respondent failed to complete and submit a form or document provided and required by the City.

The Designated Purchasing Official will not distribute a non-responsive proposal to the selection committee.

Respondent will have 2 business days from the date of notification by the Designated Purchasing Official to appeal the decision of non-responsiveness.

Non-responsive respondent must submit the appeal to the Chief Procurement Officer via email with a detailed explanation.

The decision from the Chief Procurement Officer or designee will be final.

Failure to submit the appeal timely waives the right to obtain a decision from the Chief Procurement Officer or designee.

10.8. Disclaimer

Respondents are hereby advised that due to the nature of the internet, the City cannot guarantee that access to BRASS will be uninterrupted or that emails or other electronic transmissions will be sent to you or received by us.

The City is not responsible for any delays caused by the internet or any other means of submission chosen by Respondent or both.

SECTION 11 – GENERAL INFORMATION

11.1. Prior requests for qualifications and rosters (also called pools)

The RFQ supersedes prior requests for qualifications issued by the City for architecture and engineering and related services.

The rosters resulting from the RFQ supersede prior rosters (pools) established for architectural and engineering and related services.

11.2. Duration of the RFQ

The RFQ will be in effect from Fiscal Year 2021 through end of Fiscal Year 2023.

Prior to the end of Fiscal Year 2023, the Bureau of Purchasing will either opt to extend the duration of the RFQ until the end of Fiscal Year 2024 only or to direct DPW to prepare a new request for qualifications for release in 2024.

11.3. Revised RFQ in 2022

During Fiscal Year 2022, the City will issue a revised RFQ for the following purposes:

- Evaluate firms that were not qualified. The City seeks the opportunity to either add new firm(s) to existing rosters, or to replace disqualified firm(s) from the rosters, or to consider the qualifications of firms which did not exist when the RFQ was first released.
- Add disciplines that were not contemplated when the RFQ was issued in 2021.

However, the City does not guarantee that it will qualify additional firm(s) or replace disqualified firm(s).

11.4. Legal Authority

Public bid law, City Charter Section 6-308(5) and Executive Order LC 20-01 authorize the City to issue a request for qualifications to interested and qualified firms.

11.5. Ownership

All qualification submissions and/or documentation submitted therewith are city property for all purposes.

Respondents will clearly mark documents or information claimed exempt from public records disclosure and specifically justify the exemption.

The City will not credit any blanket exemption claims lacking specific justification.

The City does not guarantee the confidentiality of submissions.

11.6. Effect

The RFQ and any related discussions or evaluations by anyone create no rights or obligations whatsoever.

The City is not responsible for submissions and/or presentation costs.

The City may cancel or modify this solicitation at any time at will, with or without notice.

Anything to the contrary notwithstanding, the contract executed by the City and a qualified firm, if any, is the exclusive statement of rights and obligations extending from the RFQ and the request for proposal connected with the contract.

11.7. Addendum

The Designated Purchasing Official posts addendum on the supplier portal of BRASS under the RFQ. A copy of the addendum is saved in the “Attachment” tab of the event for the RFQ.

Respondents shall not rely on any representation, statement, or explanation other than those made in this RFQ or in any addendums issued.

Where there appears to be a conflict between the RFQ and any addendum issued, the last addendum issued will prevail.

11.8. Agree to Contract Terms and Conditions

By responding to this RFQ, Respondent agrees to the City’s required Contract Terms and Conditions set forth in this solicitation and therefore waives any future right to contest the required provisions.

11.9. Protest

The City’s protest policy applies to this solicitation.

The policy is available at: <https://www.nola.gov/getattachment/Purchasing/Forms/No-130-Procurement-Protest-Policy.pdf/>.

11.10. Debriefing

Respondent who was not qualified can request a post-award debriefing.

The debriefing shall not include point-by-point comparisons of the debriefed respondent's submission with the awarded or selected respondent(s).

The unsuccessful respondent must submit a request in writing to the Designated Purchasing Official within 15 calendar days from the date of the notification issued by the Bureau of Purchasing.

The Bureau of Purchasing will ensure that the debriefing is conducted within a reasonable time period.

11.11. Code of Ethics

The City adheres to the Louisiana Code of Governmental Ethics, contained in the Louisiana Revised Statutes Annotated, R.S. 42:1101, *et seq.*

By submitting a qualification submission, prospective respondents warrants that there are no "conflict of interest" related to this solicitation that would violate applicable Louisiana Law.

Violation of the Louisiana Code of Governmental Ethics may result in rescission of contract, permit or licenses, and the imposition of fines and/or penalties, without contractual liability to the public in accordance with applicable law.

11.12. BRASS

The City launched BRASS in July 2019. BRASS replaces the legacy databases and is used by all City departments.

BRASS enables suppliers to register and to maintain information about their organization for the purpose of doing business with the City and receive notifications of business opportunities.

Registration is free.

The City invites prospective suppliers to learn more at <https://nola.gov/purchasing/brass/>.

11.13. Direct Deposit Electronic Payment Program

The City will require that qualified firms enroll in its direct deposit electronic payment program.

Instead of receiving paper checks, payments will be made electronically via Automated Clearing House ("ACH") and deposited directly into an account designated by the qualified respondent at its financial institution.

Enrolling in direct deposit payments supports the City's ongoing efforts to become a more efficient and effective government, deliver enhanced services and timely payments, and provide for a sustainable environment.

ACH payment will apply to the invoice that you submit through the City's Supplier Portal **AFTER** the Bureaus of Purchasing AND Treasury have completed the ACH activation. The activation process may take 4 to 10 calendar days.

11.14. Waiver of Administrative Informalities

The City shall reserve the right, at its sole discretion, to waive minor administrative informalities contained in any submission.

11.15. Errors and Omissions in Submission

The City reserves the right to seek clarification of any submission for the purpose of identifying and eliminating minor irregularities or informalities.

11.16. Familiarity with Laws

Respondents shall familiarize themselves with and shall comply with all applicable Federal and State Laws, parish/municipal ordinances, resolutions, and the rules and regulations of all authorities having jurisdiction over the solicitation.

These laws and/or ordinance will be deemed to be included in the contract, the same as though herein written in full.

11.17. Sample Agreement

The City supplies a sample professional services agreement under Section 13.

The qualified respondent(s) shall be expected to execute a contract that is substantially the same as the sample agreement.

Respondent shall not submit its own standard contract terms and conditions as a response to this RFQ.

11.18. FEMA Provisions.

Notwithstanding any provision of the contract to the contrary during the performance of the contract, qualified respondents shall be required to comply with the Special Compliance Conditions for FEMA – Funded Contracts. See Section 13.

11.19. HUD Provisions.

Notwithstanding any provision of the contract to the contrary during the performance of the contract, qualified respondents shall be required to comply with the HUD Compliance Provisions for Direct Grantee Construction and Professional Service Contracts. See Section 13.

11.20. Application to Selection Processes

Unless stated otherwise in the request for proposal(s) issued to qualified firm(s) when a project is identified, the terms and conditions set forth in the RFQ apply to all requests for proposals.

SECTION 12 – STATEMENT OF NO RESPONSE

If you elected not to respond to the RFQ, the Bureau of Purchasing is interested in learning the reason(s) for non-response.

Your response to the below questionnaire will help the City understanding potential challenges and/or barriers with the RFQ.

- <https://forms.office.com/Pages/ResponsePage.aspx?id=hfTLCLccAkqaIQ3ZtFuf90s12RkxNB5KnaGW8hYN33NUMjZBN05YS1U0UVY4N0tXOFdEMEVHQTFFXNi4u>

SECTION 13 – ATTACHMENTS

13.1. Document to Review

- Attachment A – Needed Services

13.2. Required to Submit with Proposal In Response to RFQ

- Attachment B – Standard Form 330
- Attachment C – Roster Application Form
- Attachment D – Affidavit to Acknowledge the DBE Program
- Attachment E – Affidavit for Conflict of Interest Disclosure
- Attachment F – Affidavit for Compliance with Hiring Requirement

13.3. *Contract Terms and Conditions and Insurance*

- Attachment G - Insurance Requirements
- Attachment H – City Contract Terms and Conditions
- Attachment I – FEMA Compliance Provisions
- Attachment J – HUD Compliance Provisions

13.4. *Sample Agreement*

- Attachment K – Sample Professional Services Agreement

[ATTACHMENTS A THRU K ON FOLLOWING PAGES]

SECTION 13.1.

**THE FOLLOWING DOCUMENT IS FOR REVIEW
ONLY**

**ATTACHMENT NO. A
CITY OF NEW ORLEANS
NEEDED SERVICES**

A.1 Engineering and Construction Administration Services for Roadway Enhancement and Reconstruction

The City's Department of Public Works ("DPW") seeks to identify and select qualified firms that may be engaged over the next 12-48 months to provide the City with professional design, engineering, and/or construction administration services, to support the delivery of projects to assess, design, manage, build and/or repair streets, sidewalks, bikeways, streetlights, traffic signals, drainage systems, bridges, utilities, and other public works infrastructure features city-wide. The professional services may include but are not limited to:

- I. Design Engineering, including but not limited to schematic design, surveys, preliminary design, final design and environmental study;
- II. Design Engineering, including but not limited to schematic design, surveys, preliminary design, final design and environmental study;
- III. Engineering Staff Augmentation;
- IV. Construction Administration
- V. Resident Inspection Services

Other engineering services necessary to reconstruct, restore, repair, enhance multiple subsurface and surface works and other incidental improvements in accordance with a strict schedule may also be needed. General descriptions of the services for which the firm must be qualified are below and may be supplemented or modified. All services are expected to be provided with the same degree of care, skill and diligence as would be ordinarily exercised by a competent practitioner of the same profession in providing similar services in major United States metropolitan areas under the same or similar circumstances.

I. Design Engineering

Design Engineering services may include without limitation:

- Street reconstruction or enhancement projects and/or transportation enhancements that may include the following design features without limitation:
 - roadway pavement complete with curbs;
 - a base for the roadway pavement;
 - subsurface and/or surface drainage systems, water, and sanitary sewer installation, modifications, adjustments and repair as required;
 - adjustments as required at driveways, at intersecting streets, and at project termini.
 - installation of ramps for the handicapped at intersections (including medians).
 - sidewalk and driveways and other pedestrian surface walkway improvements;
 - landscaping;
 - roadway pavement condition assessments

- management of drainage asset cleaning, closed circuit television (“CCTV”), and engineering assessment;
 - bridge inspection, structural assessments and load rating services;
 - bridge design;
 - multi-modal level of service analysis and traffic studies for roadways;
 - bike lanes and bike facilities/infrastructure;
 - traffic and pedestrian signalization;
 - vehicular and pedestrian signage;
 - lighting;
 - public art;
 - pocket park improvements;
 - minor curb, gutter, sidewalk, street surface, and other improvements where repair and/or transition to adjacent improvement are necessary;
 - minor drainage modifications and improvements;
 - final grades compatible with adjacent properties and ensuring a positive flow of water towards catch basins; and
 - compliance with the City’s General Specifications for Street Paving and/or the State of Louisiana’s Standard Specifications for Roads and Bridges and/or Federal Highway Administration regulations and/or any other applicable design regulations.
- Schematic Design services that may include without limitation:
 - developing general design criteria outlining the potential enhancement elements along the project corridor(s);
 - developing a conceptual plan or design and cost estimates for the project corridor(s);
 - and
 - preparing and submitting grant application(s).
 - Survey services performed under the supervision of a qualified surveyor, licensed to practice land surveying in the State of Louisiana, that may include without limitation:
 - conducting topographic and right-of-way surveys in the project area (including in transverse direction a distance of fifty (50) feet from the right-of-way line, in longitudinal direction a distance of fifty (50) feet beyond the right-of-way line of bounding streets), including all visible surface objects, using temporary bench marks that will not be destroyed during construction, and using base lines referenced to apparent property lines;
 - procuring information concerning all existing and proposed utilities and Sewerage & Water Board facilities within the project area through field surveys, contacts with the utility companies, and use of the City’s television inspection contractor; and
 - preparing and submitting a base line plot and survey documents stamped and signed by a Louisiana-licensed surveyor in accordance with the City’s General Guide for Design, Survey and Preparation of Plans and Specifications.

- Environmental Study services as required to provide all documentation necessary for a Categorical Exclusion (“CE”), Record of Environmental Considerations (“REC”), Site- Specific Environmental Assessment (“EA”) and/or other related documents in accordance with the National Environmental Policy Act (“NEPA”), as amended, and the Federal Highway Administration’s regulation and guidelines.

- Preliminary Design services that may include without limitation:

- preparing and submitting preliminary design plans and supporting computations, including a line and grade analysis, including at a minimum a title sheet showing the limits of work, typical sections, special details, plans and profile drawings (including proposed gutter profiles and all sidewalk and property line grades required for proper design), cross sections, and preliminary summary sheets;
- incorporation of core boring information where applicable, all vertical and horizontal location information for utilities in the project area, and all elevations of Sewerage & Water Board facilities;
- incorporating horticultural requirements through consultation with the City’s Department of Parks and Parkways and reporting and resolving conflicts;
- preparing and submitting a preliminary construction cost estimate based on estimated quantities developed from the preliminary design plans;
- revising preliminary design plans according to requests and comments from the City until the preliminary design plans are acceptable to the City;
- preparing and submitting final preliminary design plans for a complete plan-in-hand review by the City, utility companies, and other interested parties;
- participating in field reviews as required by the City; and
- compiling plan-in hand comments, additions, and deletions for inclusion the final design plans.

- Final Design services that may include without limitation:

- preparing, submitting, and revising complete final construction plans, specifications, drawings, bid documents, traffic control plans, permanent pavement marking and signing plans, and construction cost estimates conforming with the City’s plan-in hand comments, additions, and deletions and all requirements of format and content;
- preparing and submitting final, approval plans and specifications in an electronic format compatible with the City’s CAD and software systems;
- providing plans signed and stamped by a Louisiana registered Civil Engineer responsible for the design;
- providing regular updates to the City concerning the progress of requested design services;
- attending and participating in pre-bid and pre-construction conferences, other project conferences, and public meetings and hearings; and

- performing and completing each phase of work in accordance with a strict schedule.

II. Engineering Staff Augmentation

Engineering Staff Augmentation services may include without limitation:

- Performing and completing project design reviews ensuring compliance with all applicable DPW, SWB, DOTD, and FHWA design guidelines and specifications;
- Performing and completing constructability reviews of design and/or construction documents, geotechnical testing reports, field inspection reports, cost estimates, throughout all phases of design and construction to make certain that the work requirements are clear, the documents are in compliance with all applicable DPW, DOTD, and FHWA design guidelines and specifications;
- Participate in project-related meetings and inspections as required during all phases of design and construction; and
- Assisting in the review and processing of field changes, plan changes, and contract amendments to support project management of projects during all phases of project delivery.

III. Construction Administration services may include:

- Attend pre-construction meeting and prepare meeting agenda and minutes
- Review, respond, and track material submittals, approve, or take other action, for shop drawings and samples which the Construction Contractor is required to submit (as warranted)
- Obtain a pre-construction video from the Construction Contractor and review it prior to work commencing (if available)
- Review, track, and respond to contractor Requests for Information (“RFIs”) within 10 calendar days from receipt
- Address technical issues arising during construction
- Conduct progress meetings (weekly or more often as needed)
- Perform site visits at intervals appropriate to various stages of construction (weekly or more often as needed)
- Recommend work be rejected while in progress if not in accordance with contract documents and threatens integrity of the design concept
- Issue necessary interpretations and clarifications of the contract documents and specifications as appropriate (field orders)
- Evaluate and recommend the acceptability of substitute or “or-equal” materials and equipment proposed by the Construction Contractor
- Review quantities and develop a draft pay application with the Construction Contractor for review by the Department
- Review final pay applications for Construction Contractor invoicing and recommend payment
- Prepare the Independent Cost Estimate (“ICE”) and Cost Analysis (“CA”) for all field changes and plan changes for approval by the City
- Review and approve Project schedule

A.2 Engineering Services for Bridges

The City’s Department of Public Works (“DPW”) seeks to identify and select qualified firms that may be engaged over the next 12-48 months to provide the City with professional design,

engineering, and/or construction management and inspection services, to support the delivery of projects to assess, design, manage, build and/or repair bridges city-wide. The professional services may include but are not limited to:

3. Design Engineering, including but not limited to schematic design, surveys, preliminary design, final design and environmental study;
4. Engineering Staff Augmentation;
5. Construction Administration
6. Resident Inspection Services

Other engineering services necessary to reconstruct, restore, repair, enhance multiple subsurface and surface works and other incidental improvements in accordance with a strict schedule may also be needed. General descriptions of the services for which the firm must be qualified are below and may be supplemented or modified. All services are expected to be provided with the same degree of care, skill and diligence as would be ordinarily exercised by a competent practitioner of the same profession in providing similar services in major United States metropolitan areas under the same or similar circumstances.

A. Design Engineering

Design Engineering services may include without limitation:

- Bridge reconstruction or enhancement projects and/or transportation enhancements that may include the following design features without limitation:
 - bridge inspection, structural assessments and load rating services;
 - bridge design;
 - roadway pavement complete with curbs;
 - a base for the roadway pavement;
 - subsurface and/or surface drainage systems, water, and sanitary sewer installation, modifications, adjustments and repair as required;
 - adjustments as required at driveways, at intersecting streets, and at project termini.
 - installation of ramps for the handicapped at intersections (including medians).
 - sidewalk and driveways and other pedestrian surface walkway improvements;
 - landscaping;
 - roadway pavement condition assessments

- management of drainage asset cleaning, closed circuit television (“CCTV”), and engineering assessment;
 - multi-modal level of service analysis and traffic studies for roadways;
 - bike lanes and bike facilities/infrastructure;
 - traffic and pedestrian signalization;
 - vehicular and pedestrian signage;
 - lighting;
 - public art;
 - pocket park improvements;
 - minor curb, gutter, sidewalk, street surface, and other improvements where repair and/or transition to adjacent improvement are necessary;
 - minor drainage modifications and improvements;
 - final grades compatible with adjacent properties and ensuring a positive flow of water towards catch basins; and
 - compliance with the City’s General Specifications for Street Paving and/or the State of Louisiana’s Standard Specifications for Roads and Bridges and/or Federal Highway Administration regulations and/or any other applicable design regulations.
- Schematic Design services that may include without limitation:
 - developing general design criteria outlining the potential enhancement elements along the project corridor(s);
 - developing a conceptual plan or design and cost estimates for the project corridor(s); and
 - preparing and submitting grant application(s).
 - Survey services performed under the supervision of a qualified surveyor, licensed to practice land surveying in the State of Louisiana, that may include without limitation:
 - conducting topographic and right-of-way surveys in the project area (including in transverse direction a distance of fifty (50) feet from the right-of-way line, in longitudinal direction a

distance of fifty (50) feet beyond the right-of-way line of bounding streets), including all visible surface objects, using temporary bench marks that will not be destroyed during construction, and using base lines referenced to apparent property lines;

- procuring information concerning all existing and proposed utilities and Sewerage & Water Board facilities within the project area through field surveys, contacts with the utility companies, and use of the City's television inspection contractor; and
- preparing and submitting a base line plot and survey documents stamped and signed by a Louisiana-licensed surveyor in accordance with the City's General Guide for Design, Survey and Preparation of Plans and Specifications.

- Environmental Study services as required to provide all documentation necessary for a Categorical Exclusion ("CE"), Record of Environmental Considerations ("REC"), Site-Specific Environmental Assessment ("EA") and/or other related documents in accordance with the National Environmental Policy Act ("NEPA"), as amended, and the Federal Highway Administration's regulation and guidelines.

- Preliminary Design services that may include without limitation:

- preparing and submitting preliminary design plans and supporting computations, including a line and grade analysis, including at a minimum a title sheet showing the limits of work, typical sections, special details, plans and profile drawings (including proposed gutter profiles and all sidewalk and property line grades required for proper design), cross sections, and preliminary summary sheets;
- incorporation of core boring information where applicable, all vertical and horizontal location information for utilities in the project area, and all elevations of Sewerage & Water Board facilities;
- incorporating horticultural requirements through consultation with the City's Department of Parks and Parkways and reporting and resolving conflicts;
- preparing and submitting a preliminary construction cost estimate based on estimated quantities developed from the preliminary design plans;
- revising preliminary design plans according to requests and comments from the City until the preliminary design plans are acceptable to the City;

- preparing and submitting final preliminary design plans for a complete plan-in-hand review by the City, utility companies, and other interested parties;
 - participating in field reviews as required by the City; and
 - compiling plan-in hand comments, additions, and deletions for inclusion the final design plans.
- Final Design services that may include without limitation:
 - preparing, submitting, and revising complete final construction plans, specifications, drawings, bid documents, traffic control plans, permanent pavement marking and signing plans, and construction cost estimates conforming with the City's plan-in hand comments, additions, and deletions and all requirements of format and content;
 - preparing and submitting final, approval plans and specifications in an electronic format compatible with the City's CAD and software systems;
 - providing plans signed and stamped by a Louisiana registered Civil Engineer responsible for the design;
 - providing regular updates to the City concerning the progress of requested design services;
 - attending and participating in pre-bid and pre-construction conferences, other project conferences, and public meetings and hearings; and
 - performing and completing each phase of work in accordance with a strict schedule.

B. Engineering Staff Augmentation

Engineering Staff Augmentation services may include without limitation:

- Performing and completing project design reviews ensuring compliance with all applicable DPW, SWB, DOTD, and FHWA design guidelines and specifications;
- Performing and completing constructability reviews of design and/or construction documents, geotechnical testing reports, field inspection reports, cost estimates, throughout all phases of design and construction to make certain that the work requirements are

clear, the documents are in compliance with all applicable DPW, DOTD, and FHWA design guidelines and specifications;

- Participate in project-related meetings and inspections as required during all phases of design and construction; and
- Assisting in the review and processing of field changes, plan changes, and contract amendments to support project management of projects during all phases of project delivery.

IV. Construction Administration services may include:

- Attend pre-construction meeting and prepare meeting agenda and minutes
- Review, respond, and track material submittals, approve, or take other action, for shop drawings and samples which the Construction Contractor is required to submit (as warranted)
- Obtain a pre-construction video from the Construction Contractor and review it prior to work commencing (if available)
- Review, track, and respond to contractor Requests for Information (“RFIs”) within 10 calendar days from receipt
- Address technical issues arising during construction
- Conduct progress meetings (weekly or more often as needed)
- Perform site visits at intervals appropriate to various stages of construction (weekly or more often as needed)
- Recommend work be rejected while in progress if not in accordance with contract documents and threatens integrity of the design concept
- Issue necessary interpretations and clarifications of the contract documents and specifications as appropriate (field orders)
- Evaluate and recommend the acceptability of substitute or “or-equal” materials and equipment proposed by the Construction Contractor
- Review quantities and develop a draft pay application with the Construction Contractor for review by the Department
- Review final pay applications for Construction Contractor invoicing and recommend payment
- Prepare the Independent Cost Estimate (“ICE”) and Cost Analysis (“CA”) for all field changes and plan changes for approval by the City
- Review and approve Project schedule

A.3 Construction Management

Construction Management services may include without limitation:

- Construction administration services, including monitoring and documenting the construction contractor’s performance of the project in strict accordance with the construction plans and specifications and the construction contractor’s schedule, under the supervision and direction of a Louisiana Registered Civil Engineer in charge of the Consultant’s work under this Agreement who must sign all documents submitted to the City, including without limitation:
 - o reviewing design plans and specifications prior to award of a construction contract;
 - o reviewing and updating construction plans and specifications;
 - o attending the pre-construction meeting;
 - o developing a project quality assurance monitoring plan;

- o reviewing and approving a project schedule submitted by the construction contractor;
- o monitoring and assisting in coordination of project phasing;
- o obtaining and documenting a pre-construction video;
- o providing field personnel experienced in roadway, bridge, or applicable type of construction ensuring that personnel are duly qualified and experienced to perform the type of required services in accordance with all applicable regulations, policies, and standard operating procedures;
- o monitoring construction activities and document deficiencies, including without limitation: construction progress; consultant and construction contractor personnel, equipment, and work performed; material quantities in-place by actual measurement and calculation; traffic control and site safety procedures; quality tests; the application of work forces; the conformance of the work to the construction contractor's schedule and the timely prosecution of the work; and the construction of required corrections and testing;
- o evaluating and making recommendations as to submittals, shop drawings, samples, substitute materials and equipment, and value engineering proposals;
- o rejecting non-conforming work and materials;
- o advising the City of all observed deficiencies in the construction contractor's work;
- o coordinating with the engineer of record and monitoring the activities of the City's materials and construction testing contractor to ensure that all materials entering the Project are in accordance with the construction plans and specifications;
- o reviewing and maintaining records for all tests;
- o evaluating, tracking, and recommending responses to the construction contractor's requests for information and interpreting plans and specifications for the project, subject to the City's approval;
- o evaluating and obtaining field change authorizations;
- o reviewing plan changes, subject to the City's approval;
- o monitoring the implementation of all approved construction contract modifications (changes) to the project;
- o evaluating and maintaining field records, testing records, and other documentation and data required by the City;
- o documenting and coordinating with the City as to unforeseen items encountered during construction;
- o Reviewing daily inspection reports on the City's "Project Diary/Daily Report" forms to provide construction progress data;
- o reviewing updated monthly schedule of work items (STS-651) and weather and working days reports;
- o reviewing incident reports as needed and sending recommendations to the city;
- o notifying the City of any problems that may impact the project's cost or construction time;
- o investigating and assisting the City in responding to resident complaints,
- o documenting and notifying the City and the Sewerage & Water Board of any proposed drainage, sewer, and water work and any drainage, sewer, and water damage and any other damages as a result of construction activities;
- o conducting any required interviews of the construction contractor;
- o as applicable, reviewing and certifying the payrolls of the construction contractor and any subcontractors for compliance with applicable laws and regulations;
- o evaluating and approving or rejecting payment requests by the construction contractor and the materials and construction testing contractor;
- o reviewing the construction contractor's requests for payment on the City's forms for work satisfactorily completed in accordance with the Consultant's observations;

- o attending and supporting all project construction progress meetings;
- o inspecting the construction contractor's work at substantial completion;
- o making recommendations to the City as to the acceptance or rejection of the work and preparing any punch lists;
- o reviewing overrun/underrun statements;
- o establishing the basis, if any, to impose liquidated damages on the construction contractor;
- o reviewing any final payment requests as appropriate; and
- o conducting any warranty inspection and providing the City with a detailed report with photographs depicting all deficiencies and listing corrective actions for which the construction contractor is responsible.
- o providing final "as built" drawings upon completion; and
- o Complying with all applicable federal, state, and local laws and ordinances, including without limitation, La. R.S. 37:681 – La. R.S. 37:703 (dealing with engineering and land surveying practices).

Construction Management companies will also be evaluated on ability to:

- Enter a Data Share Agreement with the City of New Orleans
- Configure a database to capture, manage, and share required information identified for streetlights, pavement type/ condition, drainage, water, sewerage, potholes and signage assets / projects
- Ability to track all daily field observations, photographs, quantities and costs in real-time for each item of work performed across all projects
- Track and record all quantities and costs by invoice that will be used for recording for accounting purposes
- Map all assets and projects by geolocation
- Configure user sharing based on City required based on the Data Share Agreement.
- Load prior project information in a database past project and configure that data in a usable structure for all users within 60 days of executed contract.
- Report in near real-time based on the status any City asset or project(s)
- Display dashboards containing captured data based on the City of New Orleans Requests
- Provide Application Programming Interface (API) to receive all data collected to be available to any City software systems.
- Provide user licenses for up to 175 City users
- Provide tablets with database access for up to 82 City users
- Provide user training sessions for all City users
- Provide on-going maintenance and support to assist staff with all database inquiries for minimum one year
- Provide information that states the length and how the database has been previously used and not limited to how long it has been established under company's management and supervision

A.4 Green Infrastructure Design & Engineering Services

The City of New Orleans's green infrastructure program is intended to create a sustainable system of natural areas throughout the City that will provide flood risk reduction while providing ecosystem benefits improve our overall quality of life.

Green infrastructure projects may include, but are not limited to the following project features: bioretention areas, permeable pavement, bioswales, rain gardens, rain water harvesting/collection and/or conveyance systems, landscaping, LEED-certified facilities, public utilities, hydrologic/hydraulic modeling, roadways, bikeways, sidewalks, pumps, watershed and/or basin planning, public education and/or involvement, floodplain management, coastal protection, groundwater testing and/or monitoring, asset inventory, assessment, and/or management, site planning, traffic calming measures, and wetlands creation The New Orleans Department of Public Works (DPW), Sewerage and Water Board of New Orleans (SWBNO), the New Orleans Redevelopment Agency (NORA), the New Orleans Recreational Development Commission (NORDC), the Department of Parks and Parkways, the Mosquito, Termite & Rodent Control Board, Capital Projects Administration (CPA), and other City agencies/departments may participate in the competitive release of projects to this pool.

Projects may be completed using one or more of the following sources of funds: City capital bond funds, Gulf of Mexico Energy Security Act ("GOMESA"), Community Development Block Grant (CDBG), CDBG-NDR, Sewerage & Water Board of New Orleans, State Capital Outlay, Federal Highway Administration (FHWA), and Federal Emergency Management Agency (FEMA) funds, to include Hazard Mitigation Grant Program (HMGP) funds, Environmental Protection Agency (EPA) and/or other grant funds. When FHWA funds are involved, the scopes of services, design criteria, compensation, and other requirements in this RFQ may be revised to comply with current Louisiana Department of Transportation and Development (DOTD) procedures, regulations and policies. The professional services may include one or more of the following:

- Engineering/Architectural/Landscape Design;
- Financial Strategies and Services
- Construction Administration;
- Construction (Resident) Inspection; and other engineering, design, and other professional services needed to reconstruct, restore, Reviewed 6-15-2020 KW repair, connect, and enhance city assets and the urban fabric in accordance with a strict schedule.

The general descriptions of the services required below may be modified or supplemented. All services are expected to be provided with the same degree of care, skill and diligence as would be ordinarily exercised by a competent practitioner of the same profession in providing similar services in major United States metropolitan areas under the same or similar circumstances. Specific scopes of services and maximum compensation amounts will be negotiated with the selected proposer(s) at the time such services are engaged.

I. Architectural/Engineering/Landscape Design: Architectural/Engineering/Landscape Design services may include without limitation:

- a. Survey services performed under the supervision of a qualified surveyor, licensed to practice land surveying in the State of Louisiana, conforming to current DPW standards
- b. hydrologic/hydraulic modeling services to validate designed rainfall runoff retention rates and assess impacts of multiple rainfall/storm events on a given project or area
- c. watershed and/or basin planning

d. Environmental study services as required to provide all documentation necessary for a Categorical Exclusion (CE) and other related documents in accordance with the National Environmental Policy Act (NEPA), as amended, and the Federal Highway Administration's regulation and guideline

e. Preparation of drawings, specifications, reports and other deliverables, must be signed and sealed by a Louisiana registered licensed Civil Engineer in charge, for the implementation of public green space, urban corridor, stormwater management, and green infrastructure or enhancement projects and/or transportation enhancements that may include the following design features without limitation:

- Landscape-integrated water management features;
- Flexible and rigid pavement structures using AASHTO Design Method (1993);
- Integrated curb and gutter structures;
- Subsurface and/or surface drainage systems, water, and sanitary sewer installation, modifications, adjustments and repair as required;
- Adjustments as required at driveways, at intersecting streets, and at project termini.
- Installation of ramps for the handicapped at intersections (including medians).
- Sidewalks, driveways, and other pedestrian surface walkway improvements;
- Landscaping;
- Bioretention areas;
- Permeable pavement;
- Rain water harvesting structures; Reviewed 6-15-2020 KW
- Rain water collection, retention, and/or conveyance systems;
- Floodplain management;
- Coastal protection infrastructure;
- Groundwater testing and/or monitoring;
- Green infrastructure asset inventory, assessment, and/or management
- Wetlands creation and/or re-establishment;
- Bioswales, rain gardens, and other stormwater best management practices (BMPs);
- Pumps;
- Public works facilities;
- Bikeways;
- Traffic and pedestrian signalization;
- Vehicular and pedestrian signage;
- Lighting;
- Public art;
- Parks, pocket park improvements; and linear parks;
- Minor curb, gutter, sidewalk, street surface, and other improvements where repair and/or transition to adjacent improvement are necessary;
- Drainage modifications and improvements
- Final grades compatible with adjacent properties and insuring a positive flow of water towards catch basins; and
- Compliance with the City's General Specifications for Street Paving and/or the State of Louisiana's Standard Specifications for Roads and Bridges and/or Federal Highway Administration regulations and/or any other applicable design regulations

II. Financial Strategies and Services.

Financial support services that inform and enable the design, development, and long term maintenance Preparation of analysis, calculations, reports, legal documents and other deliverables that may include the following deliverables without limitation:

- a. benefit-cost analysis;
- b. ecosystem services analysis and benefit quantification;
- c. financial strategies including identification of funding sources, application of innovative financing mechanisms, O&M plans

A.5 Environmental Consulting and Related Services

The City of New Orleans needs a qualified team to provide environmental consulting, contractor and related services to the City of New Orleans. These services include, but are not limited to:

- Air monitoring – Task order may include planning and implementing an air monitoring plan at centralized locations or in full neighborhoods during specific periods of time or activities. Depending on the history of the site, consultant would advise on the likely contaminants present and suspected material that may be disturbed and methods to track such particulate matters. The consultant will advise on types of monitoring necessary, frequency, and placement of monitors. Once results of monitoring results are available, the task order will likely include review of the results and making recommendations to the City on next steps or other preventative measures.
- Brownfield Cleanup Plans, Cost Estimates, and Site Remediation – Task order may include development of plans and alternatives, recommendations, implementation and/or monitoring of known Brownfield sites. Task order may call for completion and review of permit applications by local, state and Federal regulatory agencies, assembling grant management packages, managing grants or submitting reports on behalf of the City.
- Building / Asbestos-Containing Material Surveys, Management, and Abatement – Task order may include development of plans and alternatives, recommendations, implementation and/or monitoring of plans designed to remediate asbestos and limit exposure to people and the environment. Task order may include monitoring or auditing third parties on behalf of the City.
- CADD and GIS Capabilities to support environmental projects planned or underway in the public right of way.
- Electronic Data Management and Laboratory Data Validation – Task order may include professional interpretations, gap analysis or independent reviews of reports and data submitted to the City. Task order may include performing audits of third parties on behalf of the City.
- Environmental Engineering Design and consulting – Task order may include planning, design or expert third-party recommendations or validation of recommendations. Task order may call on the consultant to audit third parties on behalf of the City.
- Geophysical Investigations – Task order may include site assessments, investigations and remediation planning, design and third party review on behalf of the City. Task orders may include developing risk assessments for the City and making expert recommendations on cleanup, storage in place or removal including follow-up remediation, monitoring, and maintenance.
- Grant writing – Task order may include identifying sources of and assembling applications to secure funding to implement environmental remediation, cleanup or development of projects on public lands. Experience should demonstrate success in securing state and Federal grants and funding. Knowledge of application processes and reporting and grant draw-down requirements.

- Greenhouse gas assessments – Task order may include establishing a base line for the City or monitoring at specific locations, making recommendations to reduce emissions and developing a reporting mechanism in line with established goals. Task order may include preparing annual reports and updates including providing data and images for reporting.
- Hazardous Waste Removal and Disposal – Task order may include planning, design, implementation, monitoring or auditing known or suspected contaminated sites. Task order may include one-time clean up projects or ongoing remediation and clean up monitoring.
- Health and Safety Monitoring – Task order may include but not be limited to air, soil or water monitoring to ensure health and safety of residents and staff at specific locations.
- Meeting with City representatives as required and representing the City in matters involving the Louisiana Department of Environmental Quality (LDEQ), the United States Environmental Protection Agency (EPA), litigation and any other proceedings involving environmental issues and related services as required
- Landfill Management – Task order may include monitoring active and post-closure sites, monitoring, reporting and maintenance including sampling, preparing and submitting annual reports to regulatory agencies.
- Lead-Based Paint Surveys, Management, and Abatement – Task order may include planning, designing, implementing, monitoring or auditing plans or project sites that are known to or suspected of having lead-based paint on site.
- Outreach and Community Relations – Task order may include development of and implementation of outreach and community relations plans and collateral pieces to facilitate community buy in or incorporate feedback from residents impacted by or in concert with environmental projects.
- Preliminary Site Assessments – Task Order may include performing field assessments and reporting on the overall condition of City-owned sites, including limitations for development and access.
- Professional Land Surveyor Services – Task order may include performing topographic surveys of City owned parcels to determine how best to re-grade
- Sampling and testing services – Task order may include collection, sampling, lab delivery and analysis of water, soil and air samples. Depending on the history of the site, consultant would advise on the likely contaminants present and suspected material that may be disturbed and methods to track. Consultant should plan to review lab results and make recommendations to the City on measures to prevent spread and minimize risk.
- Site Investigations and Remediation – Task order any include assessment and recommendation for remediation, cost estimate development, plan implementation, monitoring and reporting. Consultant should demonstrate experience performing Phase 1 and/or Phase 2 site assessments in line with standard State and Federal regulatory requirements.
- Renewable Energy – Task order may include siting, planning and coordinating development of solar or wind powered sites and tie ins to electrical grids including management of the Midcontinent Independent System Operator (MISO) process.
- Stormwater Pollution Prevention Planning – Task order may include plan development, monitoring, reporting and auditing of City-owned sites or facilities. Consultant should demonstrate experience implementing Best Management Practices and Stormwater Control Measures.

- Superfund Management – Task order may include monitoring, developing clean up plans, cost estimates, reporting and site remediation management.
- Waste Tires – Task order may include facilitating permitting, transfer, reuse and delivery of waste tires to appropriate facilities.
- Other additional environmental services and as may be required

The City is assembling a team of contractors and consultants to provide environmental services. Proposers should indicate their experience and proficiency in each of the tasks above and list specialized certifications held to perform such tasks. Lack of experience in one or more tasks will not disqualify a proposer from being selected as a provider of other tasks. Respondent should indicate the firm's ability to respond to emergency task orders and indicate whether a firm representative could be available to arrive at a project site within Orleans Parish within 60 minutes from the time called upon.

Proposers should demonstrate their ability to stay within established budgets and timelines and provide professional references for each case study example provided. Case studies should include the overall project budget, their portion of the overall budget and project size (area).

Task orders will be issued based on specific needs and projects as they arise. For each task order, the Consultant(s) will be required to submit a lump sum budget, scope, description of deliverable(s), and schedule. Upon agreement, the City will issue a Notice to Proceed (NTP) for each task order.

A.6 Resident Inspection

- Observe construction at all times while the Construction Contractor is on-site
- Inspect, measure, and track (eligible) work completed for pay requests approved by the Construction Contractor and the Engineer and provide this information to the City.
- Notify the Construction Contractor and Engineer if observe that any work may adversely affect utilities, adjacent areas and/or property, etc.
- Prepare daily field reports, and/or field books
- Photograph and/or document work progress on a daily basis, capable of using in social media posts by the City
- Document and coordinate with the City and any secondary agencies for unforeseen items encountered during construction
- Notify SWB in a timely manner of any drainage, sewer, or water line damage so that such facilities may be properly inspected
- Coordinate with and monitor work performed by material testing agency, utilities, and other on-site visitors as required
- Prepare memorandums or documentation required for field changes or plan changes
- Verify that Construction Contractor providing adequate traffic control and site safety procedures
- Prepare incident reports, and
- Notify the City and Construction Contractor of any safety concerns and potential impacts to the public.

- Maintain records for up to 5 years.

[ATTACHMENTS B THRU K ON FOLLOWING PAGES]

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SECTION 13.2.

THE FOLLOWING DOCUMENTS MUST BE COMPLETED AND SUBMITTED WITH PROPOSAL

INSTRUCTIONS:

- **Documents must be signed by an authorized representative of the entity or it will not be accepted.**
- **For Affidavits: the document must be notarized, or it will not be accepted.**
- **For Affidavits: Affiant MUST select when required or the affidavit will not be accepted.**

Instructions sheet may be omitted when submitting the affidavit

**ATTACHMENT B
CITY OF NEW ORLEANS
STANDARD FORM 330**

Respondents must include a fully completed and signed SF 330 with the proposal.

Below is a link to the website of the U.S. General Services Administration where a respondent can find and upload an electronic version of SF 330.

- [Architect-Engineer Qualifications | GSA](#)

Current revision date of the form is: 08/2016.

The City directs you to use Section H of the SF330 to provide information demonstrating past performance on contracts with public agencies and private industry, and any other pertinent information you wish to include with the submittal.

[ATTACHMENTS C THRU K ON FOLLOWING PAGES]

[The remainder of the page is intentionally left blank]

ATTACHMENT C
CITY OF NEW ORLEANS
ROSTER APPLICATION FORM

RFQ No.: _____

Name of Respondent: _____

Insert an “X” for the discipline and the type of roster you seek to apply to.

No.	Disciplines	Small Project Roster	Major Project Roster
1	Design and Engineering for Roadways and Drainage		
2	Design and Engineering for Bridges		
3	Construction Management		
4	Green Infrastructure Design and Engineering		
5	Environmental Engineering and Services		
6	Resident Inspection		

Respondent Representative (Signature)

(Print or type name)

(Address)

(Date – mm/dd/yyyy)

[ATTACHMENTS D THRU K ON FOLLOWING PAGES]

ATTACHMENT D
CITY OF NEW ORLEANS
AFFIDAVIT TO ACKNOWLEDGE DBE PROGRAM

STATE OF LOUISIANA

PARISH OF _____

Before me, the undersigned authority, came and appeared _____,
who, after being duly sworn, deposed and said that:

1. He/She is the _____ (*title*) and authorized representative of
_____ (*entity*), the “Respondent.”

2. The Respondent submits the attached proposal in response to City of New Orleans
Solicitation No. _____.

3. By responding to the solicitation, the Respondent hereby acknowledges that

- The DBE goal will be set in the request for proposal,
- The Respondent will submit the appropriate DBE form(s) when required, and
- The DBE program is governed by Sections 70-456 through 70-466 of the City
Code and the City’s CAO Policy Memorandum No. 46(r).

Respondent Representative (Signature)

(Print or type name) (Address)

Sworn to and subscribed before me, _____, Notary Public, this ____ day of
_____, 20____.

Notary Public (signature)

Notary Public (print)

Notary ID#/Bar Roll # _____

[ATTACHMENTS E THRU K ON FOLLOWING PAGES]

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ATTACHMENT E
CITY OF NEW ORLEANS
AFFIDAVIT OF CONFLICT OF INTEREST DISCLOSURE

STATE OF LOUISIANA

PARISH OF _____

Before me, the undersigned authority, came and appeared _____, who, being first duly sworn, deposed and said that:

1. He/She is the _____ and authorized representative of _____, hereafter called "Respondent."
2. The Respondent submits the attached proposal in response to City of New Orleans Solicitation No. _____.
3. The Respondent hereby confirms that a conflict(s) of interest (*check the applicable box*)
 - ☐ does not exist
 - ☐ exists
 - ☐ may exist

in connection with this solicitation which might impair Respondent's ability to perform if awarded the contract, including any familial or business relationships that the Respondent, the proposed subcontractors, and their principals have with city officials or employees.

(If a conflict(s) of interest exists and/or may exist, describe in a letter the nature of the conflict, the parties involved and why there is a conflict. Attach said letter to this form).

Respondent Representative (Signature)

(Print or type name)

(Address)

Sworn to and subscribed before me, _____, Notary Public, this ____ day of ____, 20__.

Notary Public (signature)

Notary Public (print)

Notary ID#/Bar Roll # _____

[ATTACHMENTS F THRU K ON FOLLOWING PAGES]

ATTACHMENT F
CITY OF NEW ORLEANS
AFFIDAVIT OF COMPLIANCE WITH HIRING REQUIREMENTS

STATE OF LOUISIANA

PARISH OF _____

Before me, the undersigned authority, came and appeared _____,
who, after being duly sworn, deposed and said that:

1. He/She is the _____ (*title*) and authorized representative of
_____ (*entity*), the "Respondent."

2. The Respondent submits the attached proposal in response to City of New Orleans
Solicitation No. _____.

3. The Respondent hereby confirms that _____ (*entity*) is

☐ compliant with the City of New Orleans' hiring requirements contained in City
Code Sections 2-8(d) and 2-13(a)-(f), unless otherwise excluded by city, state, or
federal laws or regulations.

☐ unable to comply with the City of New Orleans' hiring requirements contained in
City Code Sections 2-8(d) and 2-13(a)-(f) for the following reasons:

_____.

Respondent Representative (Signature)

(Print or type name) (Address)

Sworn to and subscribed before me, _____, Notary Public, this ____ day of
_____, 20____.

Notary Public (signature)

Notary Public (print)

Notary ID#/Bar Roll # _____

[ATTACHMENTS G THRU K ON FOLLOWING PAGES]

ATTACHMENT G

INSURANCE REQUIREMENTS

Except as otherwise noted, at all times during the professional services agreement or the performance of work required by the professional services agreement, the Contractor will maintain the following insurance in full force and effect for the duration of the work under the professional services agreement.

Evidence of coverage shall be provided prior to the start of any activities/work, in conjunction with the Contractor's scope of work under the agreement.

If the Contractor maintains broader coverage and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Contractor.

Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City:

Minimum Requirements:

- Workers' Compensation & Employers Liability Insurance in compliance with the applicable Workers' Compensation Act(s). Statutory and Employers Liability Insurance with limits of not less than \$1,000,000.
- Commercial General Liability Insurance including contractual liability insurance, products and completed operations, personal & advertising injury, bodily injury, property damage, abuse and molestation and any other type of liability for which this Agreement applies with limits of liability of not less than \$1,000,000 each occurrence / \$2,000,000 policy aggregate.
- Automobile Liability Insurance with limits of liability of not less than \$1,000,000 per accident for bodily injury and property damage. Insurance shall include all owned, non-owned and hired vehicles.
- Professional (Errors & Omission) Liability Insurance appropriate to the Contractors profession with limits of liability of not less than \$2,000,000 per occurrence or claim / \$2,000,000 policy aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor in this agreement.

The policy shall be amended to include independent contractors and volunteers providing professional services on behalf of or at the direction of the Contractor. Policy shall be kept in force and uninterrupted for a period of three (3) years beyond policy expiration. If coverage is discontinued for any reason during this three (3) year term, Contractor must procure and evidence full extended reporting period (ERP) coverage.

- Important: The obligations for the Contractor to procure and maintain insurance shall not be constructed to waive or restrict other obligations. It is understood that neither failure to comply nor full compliance with the foregoing insurance requirements shall limit or relieve the Contractor from any liability incurred as a result of their activities/operations in conjunction with the Contractors obligations and/or Scope of Work.

- **Additional Insured Status:** The Contractor and all Subcontractors (where applicable) will provide, and maintain current, a Certificate of Insurance naming the City of New Orleans, its departments, political subdivisions, officers, officials, employees, and volunteers are to be covered as “Additional Insureds” on the CGL policy with respect to liability arising out of the performance of this agreement, General liability insurance coverage can be provided in the form of an endorsement to the Contractors insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used).

Contractor shall require and verify that all Subcontractors maintain insurance and coverage limits meeting all the requirements stated herein.

The Certificate of Insurance, as evidence of all required coverage, should name the City of New Orleans as Certificate Holder and be delivered via U.S. Mail to 1300 Perdido Street, 9E06 – City Hall, New Orleans LA 70112.

The Additional Insured box shall be marked “Y” or Commercial General Liability coverage. The Subrogation Waiver Box must be marked “Y” for Workers Compensation/Employers Liability and Property.

- **Primary Coverage:** For any claims related to this agreement, the Contractors insurance coverage shall be primary insurance as respects the City, its departments, political subdivisions, officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City shall be non-contributing to the Contractors coverage.
- **Claims Made Policies:** If applicable, the retroactive date must be shown and must be before the date of the agreement or the beginning of work. If the coverage is canceled or non-renewed, and not replaced with another claims-made policy, Contractor must purchase “extended reporting” coverage for minimum of 3 years after the termination of this agreement.
- **Waiver of Subrogation:** The Contractor and its insurers agree to waive any right of subrogation which any insurer may acquire against the City by virtue of the payment of any loss under insurance required by this agreement.
- **Notice of Cancellation:** Each insurance policy required above shall provide that coverage shall not be canceled, expire or altered except without prior notice to the City of no less than 30 days.
- **Acceptability of Insurers:** Insurance is to be placed with insurers licensed and authorized to do business in the State of Louisiana with a current A.M. Best’s rating of no less than A: VII, unless otherwise acceptable to the City.
- **Notice:** The Contractor will provide The City of New Orleans (at City of New Orleans Attn: Risk Manager, 1300 Perdido Street, Suite 9E06, New Orleans, LA 70112- Ref.: RFQ No. 994) the following documents, within 10 calendar days of the City’s request: copies of all policies of insurance, including all policies, forms, and endorsements.
- **Miscellaneous:** Without notice from the City, the Contractor will:
 - Replenish any policy aggregate limit that is impaired before commencement of any work or continuation of any work under this Agreement;

- Substitute insurance coverage acceptable to the City within 30 calendar days if any insurance company providing any insurance with respect to this Agreement is declared bankrupt, becomes insolvent, loses the right to do business in Louisiana, or ceases to meet the requirements of this Agreement.
- Special Risks or Circumstances: The City of New Orleans shall reserve the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer coverage, or other circumstances.

[ATTACHMENTS H THRU K ON FOLLOWING PAGES]

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ATTACHMENT H
CITY CONTRACT TERMS AND CONDITIONS

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45. WAIVER OF SICK AND

1. ACKNOWLEDGMENT OF EXCLUSION OF WORKER'S COMPENSATION COVERAGE.

The Contractor herein expressly agrees and acknowledges that it is an independent contractor as defined in R.S. 23:1021 (6) and as such, it is expressly agreed and understood between the parties hereto, in entering into this Contract, that the City shall not be liable to the Contractor for any benefits or coverage as provided by the Workmen's Compensation Law of the State of Louisiana, and further, under the provisions of R.S. 23:1034 anyone employed by the Contractor shall not be considered an employee of the City for the purpose of Worker's Compensation coverage.

2. ACKNOWLEDGMENT OF EXCLUSION OF UNEMPLOYMENT COMPENSATION COVERAGE.

The Contractor herein expressly declares and acknowledges that it is an independent contractor, and as such is being hired by the City under this Contract for hire as noted and defined in R.S. 23:1472 (E), and therefore, it is expressly declared and understood between the parties hereto, in entering into this Contract, or agreement for hire, and in connection with unemployment compensation only, that:

- a. The Contractor has been and will be free from any control or direction by the City over the performance of the services covered by this contract; and
- b. Services to be performed by the Contractor are outside the normal course and scope of the City's usual business; and
- c. The Contractor has been independently engaged in performing the services listed herein prior to the date of this Contract.

ANNUAL LEAVE BENEFITS.

Consequently, neither the Contractor nor anyone employed by the Contractor shall be considered an employee of the City for the purpose of unemployment compensation coverage, the same being hereby expressly waived and excluded by the parties hereto.

3. ASSIGNABILITY. The Contractor shall not assign any interest in this Contract and shall not transfer any interest in the same without prior written consent of the City.

4. AMENDMENT. The Contract shall not be modified except by written amendment executed by duly authorized representatives of the parties.

5. AUDIT AND INSPECTION:

- a. The Contractor will submit to any City audit, inspection, and review and, at the City's request, will make available all documents relating or pertaining to this Contract maintained by or under the control of the Contractor, its employees, agents, assigns, successors and subcontractors, during normal business hours at the Contractor's office or place of business in Louisiana. If no such location is available, the Contractor will make the documents available at a time and location that is convenient for the City.
- b. The Contractor will abide by all provisions of City Code § 2-1120, including but not limited to City Code § 2-1120(12), which requires the Contractor to provide the Office of Inspector General with documents and information as requested. Failure to comply with such requests shall constitute a material breach of the Contract. The Contractor

agrees that it is subject to the jurisdiction of the Orleans Parish Civil District Court for purposes of challenging a subpoena.

6. CHOICE OF LAWS. This Contract shall be construed and enforced in accordance with the laws of the State of Louisiana, without regard to its conflict of laws provisions.

7. COMPLIANCE WITH CITY'S HIRING REQUIREMENTS - BAN THE BOX.

A. The Contractor agrees to adhere to the City's hiring requirements contained in City Code Sections 2-8(d) and 2-13(a)-(f). Prior to executing this Agreement, Contractor must provide a sworn statement attesting to its compliance with the City's hiring requirements or stating why deviation from the hiring requirements is necessary.

B. Failure to maintain compliance with the City's hiring requirements throughout the term of the Agreement, or to provide sufficient written reasons for deviation, is a material breach of this Agreement. Upon learning of any such breach, the City will provide the Contractor notice of noncompliance and allow Contractor thirty (30) days to come into compliance. If, after providing notice and thirty (30) days to cure, the Contractor remains noncompliant, the City may move to suspend payments to Contractor, void the Agreement, or take any such legal action permitted by law or this Agreement.

C. This section will not apply to any agreements excluded from the City's hiring requirements by City Code Sections 2-8(d) or (g). Should a court of competent jurisdiction find any part of this section to be unenforceable, the section should be reformed, if possible, so that it is enforceable to the maximum extent permitted by law, or if reformation is not possible, the section should be fully severable and the remaining provisions of the Agreement will remain in full force and effect.

D. The Contractor will incorporate the terms and conditions of this Article into all subcontracts, by reference or otherwise, and will require all subcontractors to comply with those provisions.

8. CONFLICT OF INTEREST. In the interest of ensuring that efforts of the Contractor do not conflict with the interests of the City, and in recognition of the Contractor's responsibility to the City, the Contractor agrees to decline any offer of employment if its independent work on behalf of the City is likely to be adversely affected by the acceptance of such employment. The initial determination of such a possibility rests with the Contractor. It is incumbent upon the Contractor to notify the City and provide full disclosure of the possible effects of such employment on the Contractor's independent work in behalf of the City. Final decision on any disputed offers of other employment for the Contractor shall rest with the City.

9. CONSTRUCTION OF AGREEMENT. Neither party will be deemed to have drafted the Contract. The Contract has been reviewed by all parties and will be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of all parties. No term of the Contract will be construed or resolved in favor of or against the City or the Contractor on the basis of which party drafted the uncertain or ambiguous language. The headings and captions of the Contract are provided for convenience only and are not intended to have effect in the construction or interpretation of the Contract. Where appropriate, the singular includes the plural, and neutral words and words of any gender include the neutral and other gender.

10. CONVICTED FELON STATEMENT. The Contractor complies with City Code § 2-8(c) and no principal, member, or officer of the Contractor has, within the preceding five years, been

convicted of, or pled guilty to, a felony under state or federal statutes for embezzlement, theft of public funds, bribery, or falsification or destruction of public records.

11. COST RECOVERY. In accordance with Section 2-8.1 of the Municipal Code entitled “Cost recovery in contracts, cooperative endeavor agreements, and grants,” to the maximum extent permitted by law, the Contractor shall reimburse the City or disgorge anything of value or economic benefit received from the City if the Contractor fails to meet its contractual obligations.

12. DECLARED DISASTER.

A. Declaration. During the declaration of an emergency by federal, state, and/or local government, the Contractor shall provide support to the City on an as-needed and task-order-driven basis. Because of the uncertainty of the scale and/or type of emergency, the services to be provided by the Contractor will vary and may need to be adjusted as needs are identified. The Contractor may be requested to provide a range of services. Said services may need to be rendered on a continual basis (24 hours / 7 days per week) during the declaration of an emergency.

B. Task Order. Notification and Personnel. Prior or during the declaration of an emergency, the City will notify the Contractor via task order if the City requires the Contractor’s support. Upon activation by task order, the Contractor will provide the City with contact information of personnel assigned to the task order; and coordinate with the City to identify any personnel available to meet the City’s needs.

C. Purchase Order. Once services are identified, the City will issue a purchase order to the Contractor. The City will issue a subsequent purchase order in case of additional needs for services, or may issue a modified purchase order if changes are made to the initial purchase order.

D. The Contractor will ensure that the City is provided with timely and accurate reports and other documentation, as requested.

13. DISADVANTAGED BUSINESS ENTERPRISE (“DBE”) PROGRAM.

A. In General. The Contractor agrees to abide by the City Code sections 70-496, *et seq.*, to use its best efforts to carry out all applicable requirements of the City’s DBE Program for the administration of this Agreement, as set forth in the City Code and any applicable rules adopted thereunder. The City’s Office of Supplier Diversity (“OSD”) oversees the DBE Program and assigns a DBE Compliance Officer (“DBECO”) to ensure compliance.

B. Monitoring. To ensure compliance with DBE requirements during the term of this Agreement, the DBECO will monitor the Contractor’ use of DBE subcontractors/suppliers (“**DBE Entities**”) through the following actions:

1. Job site visits;
2. Electronic payment tracking via the Contract Compliance Monitoring System or other means as approved by the OSD;
3. Routine audits of contract payments to all subcontractors;
4. Reviewing of records and reports; and/or
5. Interviews of selected personnel.

The DBECO may schedule inspections and on-site visits with or without prior notice to the Contractor or DBE Entities.

C. Cooperation. The Contractor shall:

1. Designate an individual as the “DBE Liaison” who will monitor the Contractor’s DBE participation as well as

document and maintain records of “Good Faith Efforts” with DBE Entities.

2. Execute written contracts with DBE Entities that meet the applicable DBE goals.

a. The Contractor shall provide the DBECO with copies of said contracts within thirty (30) days from the date this Agreement is fully executed between the City and the Contractor.

b. The Contractor shall agree to promptly pay subcontractors, including DBE Entities, in accordance with law.

3. Establish and maintain the following records for review upon request by the OSD:

a. Copies of written contracts with DBE Entities and purchase orders;

b. Documentation of payments and other transactions with DBE Entities;

c. Appropriate explanations of any changes or replacements of DBE Entities, which may include a record of “Post-Award Good Faith Efforts” for each certified firm that the Contractor does not use in accordance with the approved DBE

participation submission;

d. Any other records required by the OSD.

The Contractor is required to maintain such records for three (3) years after completion or closeout of this Agreement. Such records are necessary to determine compliance with their DBE obligations.

4. Post monthly payments and submit regular reports to the DBECO as required via the online “Contract Compliance Monitoring System” or other means approved by the OSD.

a. The Contractor shall submit the initial report outlining DBE participation within thirty (30) days from the date of notice to proceed (or equivalent document) issued by the City to the Contractor. Thereafter, “DBE Utilization” reports shall be due on or before the fifteenth (15th) day of each month until all DBE subcontracting work is completed.

b. Reports are required even when no activity has occurred in a monthly period.

c. If the established percentage is not being met, the monthly report shall include a narrative description of the

progress being made in DBE participation.

- d. The Contractor may also be required to attach or upload copies of canceled checks or bank statements that identify payer, payee and amount of transfer to verify payment information as indicated on the form.

5. Conform to the established percentage as approved by the OSD.

- a. The total dollar amount of the Agreement shall include approved change orders and amendments. For a requirements contract, the total dollar amount shall be based in actual quantities ordered.
- b. No changes to the established percentage and DBE Entities submitted on DBE Compliance Form-1 shall be allowed without approval by the OSD.
- c. The City will not adjust the contract for any increase in cost due to replacement of DBE Entities.

D. Post-Award Modification. The OSD may grant a post-award modification request if:

- a. for a reason beyond the Contractor's

control, the Contractor is unable to use the certified DBE entity submitted on DBE Compliance Form-1 to perform the specified work. The Contractor must notify the OSD of the intent for removal and substitution of a certified DBE immediately upon determination of that the DBE submitted on Compliance Form -1 is unable to perform the specified work. In such case, the Contractor shall use and document "Good Faith Efforts" to find a similarly qualified and certified DBE entity to perform such specified work. The same criteria used for establishing "Good Faith Efforts" in maximizing the participation of DBE Entities prior to awarding the Agreement will also apply to the substitution of DBE subcontractors during the performance of the Agreement; or

- b. the Contractor reasonably believes that, due to a change of scope, execution of the work in accordance with the

directions from the City is unlikely to meet the established percentage or terms. In such case, the Contractor shall use and document "Good Faith Efforts" to achieve a reasonable amount of DBE participation on the remaining work on the Agreement.

14. DURATION. The services to be provided under the terms of this Contract shall begin upon execution of Contract and shall end no later than twelve (12) months after. It is understood and acknowledged by all signers to this Contract that work described under these terms is to be accomplished during the time period specified herein.

15. EMPLOYEE VERIFICATION. The Contractor swears that (i) it is registered and participates in a status verification system to verify that all employees in the State of Louisiana are legal citizens of the United States or are legal aliens; (ii) it shall continue, during the term of this Agreement, to utilize a status verification system to verify the legal status of all new employees in the State of Louisiana; and (iii) it shall require all subcontractors to submit to the Contractor a sworn affidavit verifying compliance with items (i) and (ii) above. Any violation of the provisions of this paragraph may subject this Agreement to termination, and may further result in the Contractor being ineligible for any public contract for a period of three years from the date the violation is discovered. The Contractor further acknowledges and agrees that it shall be liable for any additional costs incurred by the City occasioned by the termination of this Agreement or the loss of any license or permit to do business in the State of Louisiana resulting from a violation of this provision. The Contractor will

provide to the City a sworn affidavit attesting to the above provisions if requested by the City. The City may terminate this Agreement for cause if the Contractor fails to provide such the requested affidavit or violates any provision of this paragraph.

16. ENTIRE AGREEMENT. This Agreement, including all incorporated documents, constitutes the final and complete agreement and understanding between the parties. All prior and contemporaneous agreements and understandings, whether oral or written, are superseded by this Agreement and are without effect to vary or alter any terms or conditions of this Agreement.

17. NON-DISCRIMINATION

A. Equal Employment Opportunity.

In all hiring or employment made possible by, or resulting from this Agreement, the Contractor (1) will not be discriminate against any employee or applicant for employment because of race, sex, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, gender identity, creed, culture, or ancestry, and (2) where applicable, will take affirmative action to ensure that the Contractor's employees are treated during employment without regard to their race, sex, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, gender identity, creed, culture, or ancestry. This requirement shall apply to, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. All solicitations or advertisements for employees shall state that all qualified applicants will receive consideration for employment without regard to race, sex, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, gender identity, creed, culture, or ancestry.

B. Non-Discrimination. In the performance of this Agreement, the Contractor will not discriminate on the basis, whether in fact or perception, of a person's race, color, creed, religion, national origin, ancestry, age, sex, gender, sexual orientation, gender identity, domestic partner status, marital status, physical or mental disability, or AIDS- or HIV-status against (1) any employee of the City working with the Contractor in any of Contractor's operations within Orleans Parish or (2) any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by the Contractor. The Contractor agrees to comply with and abide by all applicable federal, state and local laws relating to non-discrimination, including, without limitation, Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990.

C. The City may terminate this Agreement for cause if the Contractor fails to comply with any obligation in this Article, which failure is a material breach of this Agreement.

18. EXCLUSIVE JURISDICTION AND VENUE. For all claims arising out of or related to this Contract, the Contractor hereby consents and yields to the jurisdiction of the Civil District Court for the Parish of Orleans, and expressly waives any (A) pleas of jurisdiction based upon Contractor's residence and (B) right of removal to federal court based upon diversity of citizenship.

19. EXTENSION. This Contract may be extended at the option of the City, provided that funds are allocated by the Council of the City and the extension of the Contract facilitates the continuity of services provided herein. This Contract may be extended by the City for four (4) additional one-year terms.

20. FORCE MAJEURE.

A. Event. An event of Force Majeure will include any event or occurrence not reasonably foreseeable by the City at the execution of this Agreement, which will include, but not be limited to, abnormally severe and unusual weather conditions or other acts of God (including tropical weather events, tornados, hurricanes, and flooding); declarations of emergency; shortages of labor or materials (not caused by City); riots; terrorism; acts of public enemy; war; sabotage; cyber-attacks, threats, or incidents; epidemics or pandemics; court or governmental order; or any other cause whatsoever beyond the reasonable control of the City, provided such event was not caused by the negligence or misconduct of the City, by the failure of the City to comply with applicable laws, or by the breach of this Agreement.

B. Notice. To seek the benefit of this Article, the City must provide notice in writing to the Contractor stating: (1) an event triggering this Article has occurred; (2) the anticipated effect of the Force Majeure event on performance; and (3) the expected duration of the delay, if the Agreement is being suspended.

C. Effect.

- 1.** Upon the occurrence of a Force Majeure event, for which the City has provided required notice, the City may, at its sole discretion:
 - a.** Suspend this Agreement for a duration to be set by the City, not to exceed 90 days. During such time of suspension, the Parties will not be liable or responsible for performance of their respective obligations under this Agreement, and there will be excluded from the computation of such period of time any delays directly due to the occurrence

of the Force Majeure event. During any such period of suspension, the Contractor must take all commercially reasonable actions to mitigate against the effects of the Force Majeure event and to ensure the prompt resumption of performance when so instructed by the City; or

- b. Terminate this Agreement, either immediately or after one or more periods of suspension, effective on notice to the Contractor and without any further compensation due.
2. Notwithstanding Section C(1) above, the obligations relating to making payments when due (for services or materials already provided) and those obligations specified to survive in the Agreement will be unaffected by any suspension or termination.

21. INCORPORATION INTO SUBCONTRACTS. The Contractor will incorporate these Contract Terms and Conditions into all subcontracts, by reference or otherwise, and will require all subcontractors to comply with these provisions.

22. INDEMNIFICATION.

A. To the fullest extent permitted by law, the Contractor will indemnify, defend, and hold harmless the City, its agents, employees, officials, insurers, self-insurance funds, and assigns (collectively, the "Indemnified Parties") from and against any and all claims, demands, suits, and judgments of sums of money accruing against the Indemnified Parties: for loss of life or injury or damage to persons or property arising from or relating to any act or omission or the operation of the Contractor, its agents or employees while engaged in or in connection with the

discharge or performance of any services under this Contract; and for any and all claims and/or liens for labor, services, or materials furnished to the Contractor in connection with the performance of work under this Contract.

B. Limitation. The Contractor's indemnity does not extend to any loss arising from the gross negligence or willful misconduct of any of the Indemnified Parties, provided that neither the Contractor nor any of its agents or employees contributed to such gross negligence or willful misconduct.

C. Independent Duty. The Contractor has an immediate and independent obligation to, at the City's option: (a) defend the City from or (b) reimburse the City for its costs incurred in the defense of any claim that actually or potentially falls within this indemnity, even if: (1) the allegations are or may be groundless, false, or fraudulent; or (2) the Contractor is ultimately absolved from liability.

D. Expenses. Notwithstanding any provision to the contrary, the Contractor shall bear the expenses including, but not limited to, the City's reasonable attorney fees and expenses, incurred by the City in enforcing this indemnity.

23. INDEPENDENT CONTRACTOR STATUS. The Contractor is an independent contractor and shall not be deemed an employee, servant, agent, partner, or joint venture of the City and will not hold itself or any of its employees, subcontractors or agents to be an employee, partner, or agent of the City.

24. INVOICING. The Contractor must submit invoices monthly (unless agreed otherwise between the parties to this Agreement) to the City electronically, via its supplier portal, for goods or services provided under this Agreement no later than 10 calendar days following the end of the period covered by the invoice. Untimely invoices may result in delayed payment for

which the City is not liable. At a minimum, each invoice must include the following information: invoice number, contract or purchase order number issued by the City, and the name of the city department to be invoiced. The City may require changes to the form or the content of the invoice. The City may also require additional supporting documentation to be submitted with invoices.

25. LIMITATIONS OF THE CITY'S OBLIGATIONS.

The City has no obligations not explicitly set forth in this Agreement or any incorporated documents or expressly imposed by law.

26. LIVING WAGES.

A. Definitions. Unless otherwise expressly provided in this Agreement, Capitalized terms used but not defined herein, shall have the definition attributed to them in Article VIII, Section 70-802 of the City Code.

B. Compliance. To the fullest extent permitted by law, the Contractor agrees to abide by City Code Sections 70-801, *et seq.*, which requires, in pertinent part, the following:

1. Payment of an hourly wage to Covered Employees equal to the amounts defined in the City Code ("**Living Wage**");
2. Receipt of at least seven (7) days per year of compensated leave for Covered Employees, as required by Section 70-807 of the City Code; and
3. Post notice in a prominent place regarding the applicability of the Living Wage Ordinance in every workplace in which Covered Employees are working that is within the Covered Employer's custody and control, as required by

Section 70-810 of the City Code.

C. Current Living Wage. In accordance with the Living Wage Ordinance, the current Living Wage per the Consumer Price Index data is equal to \$11.19. The Contractor shall be responsible for confirming the Current Living Wage by visiting <https://www.nola.gov/economic-development/workforce-development/>.

D. Adjusted Living Wage. In accordance with Section 70-806(2) of the City Code, the Contractor acknowledges and agrees that the Living Wage may be increased during the term of the Agreement. Any City contract or City financial assistance agreement (a) extending from one calendar year into the next or (b) with a term of longer than one year, inclusive of any renewal terms or extensions, shall require the Covered Employer to pay the Covered Employee an Adjusted Living Wage, accounting for the annual Consumer Price Index adjustment. The indexing adjustment shall occur each year on July 1st using the Consumer Price Index figures provided for the calendar year ended December 31st of the preceding year, and thereafter on an annual basis.

E. Subcontract Requirements. As required by Section 70-804 of the City Code, the Contractor, beneficiary, or other Covered Employer, prior to entering into a subcontract, shall notify subcontractors in writing of the requirements and applicability of Article VIII – The Living Wage Ordinance ("**Article**"). City contractors and beneficiaries shall be deemed responsible for violations of this Article by their subcontractors.

F. Reporting. On or before January 31st and upon request by the City, the Contractor shall identify (a) the hourly wage earned by the lowest paid Covered Employee and (b) the number of days of compensated leave received by Covered Employees earning less than 130% of the

then-prevailing wage during the current term of the Agreement, and provide the identified information to the following:

Office of Workforce Development
Living Wage - Compliance
1340 Poydras Street – Suite 1800
New Orleans, Louisiana 70112

G. Compliance Monitoring.

Covered Employers under this Agreement are subject to compliance monitoring and enforcement of the Living Wage requirements by the Office of Workforce Development (the “OWD”) and/or the Chief Administrative Office (“CAO”). Covered Employers will cooperate fully with the OWD and/or the CAO and other City employees and agents authorized to assist in the administration and enforcement of the Living Wage requirements. Steps and actions include, but are not limited to, requirements that: (i) the Contractor will cooperate fully with the OWD and the CAO and other City employees and agents authorized to assist in the administration and enforcement of the Living Wage requirements; (ii) the Contractor agrees that the OWD and the CAO and their designees, in the performance of their duties, shall have the right to engage in random inspections of job sites and to have access to the employees of the Contractor, payroll records and employee paychecks; and (ii) that the City may audit such records of the Contractor as he or she reasonably deems necessary to determine compliance with the Living Wage standards.

H. Remedies. If the Contractor fails to comply with the Living Wage requirements during the term of the Agreement, said failure may result in termination of the Agreement or the pursuit of other remedies by the City, including, but not limited to, the penalties and enforcement mechanisms set forth in Section 70-811 of the City Code.

27. NO THIRD PARTY BENEFICIARIES. The Contract is entered into for the exclusive benefit of the City and the Contractor, and the City and the Contractor expressly disclaim any intent to benefit anyone not a party to this Contract.

28. NON-EXCLUSIVITY. This Contract is non-exclusive and the Contractor may provide services to other clients, subject to the City’s approval of any potential conflicts with the performance of this Contract and the City may engage the services of others for the provision of some or all of the work to be performed under this Contract.

29. NON-SOLICITATION. The Contractor has not employed or retained any company or person, other than a bona fide employee working solely for him, to solicit or secure the subject Contract. The Contractor has not paid or agreed to pay any person, other than a bona fide employee working for him, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the subject Contract.

30. NON-WAIVER. The failure of the City to insist upon strict compliance with any provision of the Contract, to enforce any right or to seek any remedy upon discovery of any default or breach of the Contractor at such time as the initial discovery of the existence of such noncompliance, right, default or breach shall not affect or constitute a waiver of the City’s right to insist upon such compliance, exercise such right or seek such remedy with respect to that default or breach or any prior contemporaneous or subsequent default or breach.

31. OWNERSHIP INTEREST DISCLOSURE. The Contractor will provide a sworn affidavit listing all natural or artificial persons with an ownership interest in the Contractor and stating that no other person holds an ownership interest in the Contractor via a counter letter. For the

purposes of this provision, an “ownership interest” shall not be deemed to include ownership of stock in a publicly traded corporation or ownership of an interest in a mutual fund or trust that holds an interest in a publicly traded corporation. If the Contractor fails to submit the required affidavits, the City may, after thirty (30) days’ written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payments until such the required affidavits are submitted.

32. PAYMENT. Unless otherwise agreed by the City, payment terms are NET 30 days upon providing that goods and/or services described under this Agreement have been delivered, installed (if required), or rendered, and approved by the City after receipt by the City of properly submitted invoice via the City’s supplier portal.

33. PERFORMANCE MEASURES.

A. Factors. The City will measure the performance of the Contractor according to the following non-exhaustive factors: work performed in compliance with the terms of the Agreement; staff availability; staff training; staff professionalism; staff experience; customer service; staff turnover; communication and accessibility; prompt and effective correction of situations and conditions; timeliness and completeness of submission of requested documentation (such as records, receipts, invoices, insurance certificates, and computer-generated reports).

B. Failure to Perform. If the Contractor fails to perform according to the Agreement, the City will notify the Contractor. If there is a continued lack of performance after notification, the City may declare the Contractor in default and may pursue any appropriate remedies available under the Agreement and/or any applicable law. In the event of a notification of default, the City will invoice the defaulting contractor for any increase in costs and other damages sustained by the City. Further, the

City will seek full recovery from the defaulting contractor.

34. PROHIBITION AGAINST FINANCIAL INTEREST IN AGREEMENT.

No elected official or employee of the City shall have a financial interest, direct or indirect, in the Contract, including through any financial interest held by the spouse, child, or parent. Any willful violation of this provision, with the expressed or implied knowledge of the Contractor, will render this Contract voidable by the City and shall entitle the City to recover, in addition to any other rights and remedies available to the City, all monies paid by the City to the Contractor pursuant to this Contract without regard to the Contractor’s satisfactory performance.

35. PROHIBITION ON POLITICAL ACTIVITY.

None of the funds, materials, property, or services provided directly or indirectly under the terms of this Contract shall be used in the performance of this Contract for any partisan political activity, or to further the election or defeat of any candidate for public office.

36. REMEDIES CUMULATIVE. No remedy set forth in the Contract or otherwise conferred upon or reserved to any party shall be considered exclusive of any other remedy available to a party. Rather, each remedy shall be deemed distinct, separate and cumulative and each may be exercised from time to time as often as the occasion may arise or as may be deemed expedient.

37. SEVERABILITY. If a court of competent jurisdiction finds any provision of the Contract to be unenforceable as written, the unenforceable provision should be reformed, if possible, so that it is enforceable to the maximum extent permitted by law, or, if reformation is not possible, the unenforceable provision will be fully severable and the remaining provisions of the Contract will remain in full force and effect and will be construed and enforced as

if the unenforceable provision was never a part the Contract.

38. SUBCONTRACTOR

REPORTING. The Contractor will provide a list of all natural or artificial persons who are retained by the Contractor at the time of the Contract's execution and who are expected to perform work as subcontractors in connection with the Contractor's work for the City. For any subcontractor proposed to be retained by the Contractor to perform work on the Contract with the City, the Contractor must provide notice to the City within thirty (30) days of retaining that subcontractor. If the Contractor fails to submit the required lists and notices, the City may, after thirty (30) days' written notice to the Contractor, take any action it deems necessary, including, without limitation, causing the suspension of any payments, until the required lists and notices are submitted.

39. SURVIVAL. All representations and warranties and all obligations concerning record retention, inspections, audits, ownership, indemnification, payment, remedies, jurisdiction, venue, choice of law, and warranties shall survive the expiration, suspension, or termination of the Contract and continue in full force and effect.

40. SUSPENSION. The City may suspend this Contract at any time and for any reason by giving two (2) business day's written notice to the Contractor. The Contractor will resume work upon five (5) business day's written notice from the City.

41. TERMINATION FOR CAUSE. The City may terminate this Agreement immediately for cause by sending written notice to the Contractor. "Cause" includes without limitation any failure to perform any obligation or abide by any condition of this

Agreement or the failure of any representation or warranty in this Agreement, including without limitation any failure to comply with the requirements of the City's Disadvantaged Business Enterprise program and any failure to comply with any provision of City Code § 2-1120 or requests of the Office of Inspector General. If a termination for cause is subsequently challenged in a court of law and the challenging party prevails, the termination will be deemed to be a termination for convenience effective thirty (30) days from the date of the original written notice of termination for cause was sent to the challenging party; no further notice will be required.

42. TERMINATION FOR CONVENIENCE. The City may terminate this Contract at any time during the term of the Contract by giving the Contractor written notice of the City's intention to terminate at least thirty (30) days before the date of termination.

43. TERMINATION FOR NON-APPROPRIATION. This Contract will terminate immediately in the event of non-appropriation of funds sufficient to maintain this Contract without the requirement of notice and the City will not be liable for any amounts beyond the funds appropriated and encumbered for this Contract.

44. TERMS BINDING. The terms and conditions of the Contract are binding on any heirs, successors, transferees, and assigns.

45. WAIVER OF SICK AND ANNUAL LEAVE BENEFITS. It is expressly agreed and understood between the parties entering into this Contract that the Contractor, acting as an independent agent, shall not receive any sick and annual leave benefits from the City of New Orleans.

[ATTACHMENTS I THRU K ON FOLLOWING PAGES]

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ATTACHMENT I

FEMA COMPLIANCE PROVISIONS

SPECIAL COMPLIANCE CONDITIONS FOR FEMA – FUNDED CONTRACTS

The qualified firms are advised that a project may be funded by FEMA. Notwithstanding any provision of the executed contract to the contrary, the following terms and conditions apply:

A. TERMINATION FOR CAUSE: The City and the Engineer shall each have the right to terminate this Agreement for cause, effective immediately upon the giving of written notice to the other party of its intent to terminate and the reasons therefore. If the termination for cause is subsequently challenged in a court of law and if the challenging party prevails, the termination for cause shall be deemed to be a termination for convenience and shall be effective thirty (30) days from the date that the original written notice of termination for cause was given to the challenging party and no further notice shall be required.

B. TERMINATION FOR CONVENIENCE: The City shall have the right to terminate this Agreement without cause by giving the Engineer written notice of its intent to terminate at least thirty (30) days prior to the date of termination. In the event that the City elects to terminate for convenience, the City shall be obligated to pay the Engineer only for those Services performed up to and through the date of termination.

C. RECORDS RETENTION AND ACCESS:

The Engineer shall grant the City, the State of Louisiana, the Federal Emergency Management Agency, the Comptroller General of the United States, or

any of their duly authorized representatives, access to any books, documents, papers, and records of the Engineer which are pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcriptions.

The Engineer shall retain all required records for five (5) years or until such time as the State of Louisiana or the City of New Orleans make final payments and all other pending matters related to the Agreement are closed.

D. COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS:

As applicable, the Engineer shall comply with each of the following, all of which are incorporated herein by reference.

- Executive Order 11246 of September 24, 1965, entitled “Equal Employment Opportunity,” as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60);
- The Copeland “Anti-Kickback” Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3);
- Sections 103 and 107 of the Contract Work Hours and Safety

Standards Act (40 U.S.C. 327–330) as supplemented by Department of Labor regulations (29 CFR Part 5);

- Standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15);
- Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94–163, 89 Stat. 871)
- Unless duly suspended or revoked, the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR Part 5)
- Any and all applicable

requirements as required by Federal Uniform Administrative Requirements (Appendix II to 2 CFR Part 200).

E. NOTICES: Except as otherwise provided, this Agreement contains no requirements pertaining to reporting, patent rights, copyrights, or rights in data.

F. DEBARMENT, SUSPENSION, AND INELIGIBILITY:
The Engineer represents and warrants that it and its sub-recipients are not debarred, suspended, or placed in ineligibility status under the provisions of 24 CFR 24 (government debarment and suspension regulations).

G. REMEDIES AND SANCTIONS AGAINST ENGINEER'S DEFAULT: The City retains all rights and recourse under Louisiana law to enforce this Agreement or recover damages in connection with any Engineer breach or violation hereof.

[ATTACHMENTS J THRU K ON FOLLOWING PAGES]

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ATTACHMENT J
HUD COMPLIANCE PROVISIONS
FOR
DIRECT GRANTEE
CONSTRUCTION AND PROFESSIONAL SERVICES CONTRACTS

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1. EQUAL EMPLOYMENT OPPORTUNITY (Equal Opportunity Clause)

(applicable to contracts and subcontracts exceeding \$10,000)

During the performance of this contract, the Contractor agrees as follows:

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- B. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration without regard to race, color, religion, sex, or national origin.
- C. The Contractor will send to each labor union or representative of workers with which he has a

44. LIMITED ENGLISH PROFICIENCY (LEP)

collective bargaining agreement or other contract or understanding, a notice to be provided by the Contract Compliance Officer advising the said labor union or workers' representatives of the Contractor's commitment under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

- D. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended, and the rules, regulations, and relevant orders of the Secretary of Labor.
- E. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, as amended, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Department and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and others.
- F. In the event of the Contractor's noncompliance with the non-discrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, as amended, or by rule, regulation, or

order of the Secretary of Labor, or as otherwise provided by law.

- G. The Contractor will include the provisions of the sentence immediately preceding paragraph A and the provisions of paragraphs A through G in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each Contractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Department may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a Contractor or vendor as a result of such direction by the Department, the Contractor may request the United States to enter into such litigation to protect the interest of the United States.

2. **STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS**

(applicable to contracts and subcontracts exceeding \$10,000)

A. As used in these specifications:

- (1) "Covered area" means the geographical area described in the solicitation from which this contract resulted;
- (2) "Director" means Director, Office of Federal Contract Compliance Programs,

United States Department of Labor, or any person to whom the Director delegates authority;

- (3) "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
- (4) "Minority" includes:
 - (a) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - (b) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South America or other Spanish Culture or origin, regardless of race);
 - (c) Asian and Pacific Islander (all persons having origins in any of the original people of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - (d) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and

participation or
community
identification).

- B. When the Contractor, or any contractor, at anytime, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract, in excess of \$10,000, the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
- C. If the Contractor is participating (pursuant to 41 CFR 60 4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in compliance with the provisions of any such Hometown Plan. Each Contractor or Contractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or contractors toward a goal in an approved Plan does not excuse any covered Contractor's or contractor's failure to take good faith efforts to achieve the Plan goals and timetables.
- D. The Contractor shall implement the specific affirmative action standards

provided In paragraphs G(1) through G(16) of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction Contractors performing contracts in geographical areas where they do not have a federal or federally-assisted construction contract shall apply the minority and female goals established for the geographic area where the contract is being performed. Goals are published periodically in the Federal Register in notice form and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

- E. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
- F. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the

apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

G. The Contractor shall take specific affirmative action to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

- (1) Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female

individuals working at such sites or in such facilities.

- (2) Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organization's responses.
- (3) Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source, or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason

therefore, along with whatever additional actions the Contractor may have taken.

- (4) Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement have not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

- (5) Develop on-the-job training opportunities and/or participate in training programs for the area which expressly includes minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under G(2) above.

- (6) Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on a bulletin board accessible to all employees at each location where construction work is performed.

- (7) Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions including specific review of these items with on-

site supervisory personnel such as Superintendents, General Foreman, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

- (8) Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Contractors with whom the Contractor does or anticipates doing business.

- (9) Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training

organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

- (10) Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer, and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.

- (11) Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60.3.

- (12) Conduct, at least annually, an inventory and evaluation of all minority and female personnel for

- promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
- (13) Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
- (14) Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
- (15) Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction Contractors and suppliers, including circulation of solicitation to
- minority and female Contractor associations and other business associations.
- (16) Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
- H. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (G(1) through G(16)). The efforts of a Contractor association, joint Contractor-union, Contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under G(1) through G(16) of these specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation shall not be a defense for the Contractor's non-compliance.
- I. A single goal for minorities and a separate single goal for women has been established. The Contractor,

however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

- J. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any persons because of race, color, religion, sex, or national origin.
- K. The Contractor shall not enter into any subcontract with any person or firm debarred from government contracts pursuant to E.O. 11246.
- L. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause including suspension, termination, and cancellation of existing subcontracts as may be imposed or ordered pursuant to E.O. 11246, as amended.
- M. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph G of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of

the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60 4.8.

- N. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the government and to keep records. Records shall at least include for each employee, the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number where assigned, social security number, race, sex, status (e.g., mechanic, apprenticeship trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and location at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, Contractors shall not be required to maintain separate records.
- O. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application or requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

3. NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION

(applicable to contracts and subcontracts exceeding \$10,000)

- A. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.
- B. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area are applicable to all the Contractor's construction work (whether or not it is federal or federally assisted) performed in the covered area. If the Contractor performs construction work in a geographic area located outside of the covered area, it shall apply the goals established for such geographic area where the work is actually performed.

With regard to this second area, the Contractor also is subject to the goals for both its federally involved and non-federally involved construction. The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60 4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60 4.3 (a) and its efforts to meet the goals established for the geographical area where the contract resulting from this solicitation is to be performed. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ

minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order, and the regulations in 41 CFR Part 60 4. Compliance with the goals will be measured against the total work hours performed.

- C. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address, and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the sub-contract; and the geographical area in which the contract is to be performed.
- D. As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is (insert description of the geographical areas where the contract is to be performed, giving the State, parish, and city, if any):

4. CERTIFICATION OF NONSEGREGATED FACILITIES

(applicable to contracts and subcontracts exceeding \$10,000)

By the submission of this bid, the bidder, offeror, applicant or

Contractor certifies that he/she does not maintain or provide for his/her establishments, and that he/she does not permit employees to perform their services at any location, under his/her control, where segregated facilities are maintained. He/she certifies further that he/she will not maintain or provide for employees any segregated facilities at any of his/her establishments, and he/she will not permit employees to perform their services at any location under his/her control where segregated facilities are maintained. The bidder, offeror, applicant or Contractor agrees that a breach of this certification is a violation of the equal opportunity clause of this contract.

As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities provided for employees which are segregated by explicit directive or are, in fact, segregated on the basis of race, color, religion, or national origin because of habit, local custom, or any other reason.

He/she further agrees that (except where he/she has obtained for specific time periods) he/she will obtain identical certification from proposed contractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the equal opportunity clause; that he/she will retain such certifications in his/her files; and that he/she will forward the

following notice to such proposed contractors (except where proposed contractors have submitted identical certifications for specific time periods).

5. CIVIL RIGHTS

The Contractor shall comply with the provisions of Title VI of the Civil Rights Act of 1964. No person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

6. SECTION 109 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974

The Contractor shall comply with the provisions of Section 109 of the Housing and Community Development Act of 1974. No person in the United States shall on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title. Section 109 further provides that discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973, as amended, is prohibited.

7. **SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968 -**

(Section 3 Clause) (applicable to contracts and subcontracts exceeding \$100,000 funded by Section 3 covered assistance)

- A. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- C. The Contractor agrees to send to each labor organization or representative of workers with which the Contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and

employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each, and the name and location of the person(s) taking applications for each of the positions, and the anticipated date the work shall begin.

- D. The Contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the Contractor is in violation of the regulations in 24 CFR part 135. The Contractor will not subcontract with any Contractor where the Contractor has notice or knowledge that the Contractor has been found in violation of the regulations in 24 CFR part 135.
- E. The Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the Contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the Contractor's obligations under 24 CFR part 135.
- F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

- G. With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).
8. **SECTION 503 OF THE REHABILITATION ACT OF 1973 (29 USC 793)**
(applicable to contracts and subcontracts exceeding \$10,000)
- A. The Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is otherwise qualified. The Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: employment upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- B. The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
- C. In the event of the Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
- D. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided by or through the contracting officer. Such notices shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.
- E. The Contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.
- F. The Contractor will include the provisions of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by

rules, regulations, or orders of the Secretary issued pursuant to Section 503 of the Act, so that such provisions will be binding upon each Contractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

9. SECTION 504 OF THE REHABILITATION ACT OF 1973, AS AMENDED

The Contractor agrees that no otherwise qualified individual with disabilities shall, solely by reason of his disability, be denied the benefits, or be subjected to discrimination including discrimination in employment, any program or activity that receives the benefits from the federal financial assistance.

10. AGE DISCRIMINATION ACT OF 1975

The Contractor shall comply with the provisions of the Age Discrimination Act of 1975. No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving federal financial assistance.

11. CERTIFICATION OF COMPLIANCE WITH AIR AND WATER ACTS

(applicable to contracts and subcontracts exceeding \$100,000)

The Contractor and all contractors shall comply with the requirements of the Clean Air Act, as amended, 42

USC 1857 et seq., the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq., and the regulations of the Environmental Protection Agency with respect thereto, at 40 CFR Part 15, as amended.

In addition to the foregoing requirements, all nonexempt Contractors and contractors shall furnish to the owner, the following:

- A. A stipulation by the Contractor or contractors, that any facility to be utilized in the performance of any nonexempt contract or subcontract, is not listed on the List of Violating Facilities issued by the Environmental Protection Agency (EPA) pursuant to 40 CFR Part 15, as amended.
- B. Agreement by the Contractor to comply with all the requirements of Section 114 of the Clean Air Act, as amended, (42 USC 1857 c 8) and Section 308 of the Federal Water Pollution Control Act, as amended, (33 USC 1318) relating to inspection, monitoring, entry, reports and information, as well as all other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued there under.
- C. A stipulation that as a condition for the award of the contract, prompt notice will be given of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility

utilized, or to be utilized for the contract, is under consideration to be listed on the EPA List of Violating Facilities.

- D. Agreement by the Contractor that he will include, or cause to be included, the criteria and requirements in paragraph (1) through (4) of this section in every nonexempt subcontract and requiring that the Contractor will take such action as the government may direct as a means of enforcing such provisions.

12. **SPECIAL CONDITIONS
PERTAINING TO HAZARDS,
SAFETY STANDARDS AND
ACCIDENT PREVENTION**

A. **Lead-Based Paint Hazards**

The construction or rehabilitation of residential structures is subject to the HUD Lead-Based Paint regulations, 24 CFR Part 35. The Contractor and contractors shall comply with the provisions for the elimination of lead-based paint hazards under Subpart B of said regulations. The Owner will be responsible for the inspections and certifications required under Section 35.14 (f) thereof.

B. **Use of Explosives**

When the use of explosives is necessary for the prosecution of the work, the Contractor shall observe all local, state and federal laws in purchasing and handling explosives. The Contractor shall take all necessary precaution to protect

completed work, neighboring property, water lines, or other underground structures. Where there is danger to structures or property from blasting, the charges shall be reduced and the material shall be covered with suitable timber, steel or rope mats.

The Contractor shall notify all owners of public utility property of intention to use explosives at least 8 hours before blasting is done close to such property. Any supervision or direction of use of explosives by the engineer does not in any way reduce the responsibility of the Contractor or his Surety for damages that may be caused by such use.

C. **Danger Signals and Safety Devices
(Modify as Required)**

The Contractor shall make all necessary precautions to guard against damages to property and injury to persons. He shall put up and maintain in good condition, sufficient red or warning lights at night, suitable barricades and other devices necessary to protect the public. In case the Contractor fails or neglects to take such precautions, the Owner may have such lights and barricades installed and charge the cost of this work to the Contractor. Such action by the Owner does not relieve the Contractor of any liability incurred under these specifications or contract.

13. **FLOOD DISASTER
PROTECTION**

This contract is subject to the requirements of the Flood Disaster

Protection Act of 1973 (P.L. 93 234). Nothing included as a part of this contract is approved for acquisition or construction purposes as defined under Section 3(a) of said Act, for use in an area identified by the Secretary of HUD as having special flood hazards which is located in a community not then in compliance with the requirements for participation in the National Flood Insurance Program pursuant to Section 201(d) of said Act; and the use of any assistance provided under this contract for such acquisition for construction in such identified areas in communities then participating in the National Flood Insurance Program shall be subject to the mandatory purchase of flood insurance requirements or Section 102(a) of said Act.

Any contract or agreement for the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this Contract shall contain, if such land is located in an area identified by the Secretary as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001 et seq., provisions obligating the transferee and its successors or assigns to obtain and maintain, during the ownership of such land, such flood insurance as required with respect to financial assistance for acquisition or construction purposes under Section 102(a) of Flood Disaster Protection Act of 1973.

14. ACCESS TO RECORDS - MAINTENANCE OF RECORDS

The Department of Housing and Urban Development, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the Contractor which are directly pertinent to this specific contract, for the purpose of audits, examinations, and making excerpts and transcriptions. All records connected with this contract will be maintained in a central location by the unit of local government and will be maintained for a period of five (5) years from the official date of the final closeout of the grant.

15. INSPECTION

The authorized representative and agents of the Department of Housing and Urban Development shall be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials, and other relevant data and records.

16. REPORTING REQUIREMENTS

The Contractor shall complete and submit all reports, in such form and according to such schedule, as may be required by the Owner.

17. CONFLICT OF INTEREST

A. No officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract,

or the proceeds thereof, for work to be performed. Further, the Contractor shall cause to be incorporated in all subcontracts the language set forth in this paragraph prohibiting conflict of interest.

- B. No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this contract or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

18. **ACTIVITIES AND CONTRACTS NOT SUBJECT TO EXECUTIVE ORDER 11246, AS AMENDED**
(applicable to contracts and subcontracts of \$10,000 and under)

During the performance of this contract, the Contractor agrees as follows:

- A. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor shall take affirmative action to ensure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

- B. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by Contracting Officer setting forth the provisions of this non-discrimination clause. The Contractor shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- C. Contractors shall incorporate foregoing requirements in all subcontracts.

19. **PATENTS**

- A. The Contractor shall hold and save the Owner and its officers, agents, servants, and employees harmless from liability of any nature or kind, including cost and expenses for, or on account of any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the contract including its use by the Owner, unless otherwise specifically stipulated in the Contract Document.
- B. License or Royalty Fees: License and/or Royalty Fees for the use of a process which is authorized by the Owner of the project must be reasonable, and paid to the holder of the patent, or his authorized license, direct by the Owner and not by or through the Contractor.
- C. If the Contractor uses any design device or materials covered by letters, patent or copyright, he shall provide for such use by suitable agreement with the owner of such patented or copy-righted design device or material. It is mutually agreed and understood, that without

exception the contract prices shall include all royalties or costs arising from the use of such design, device or materials, in any way involved in the work. The Contractor and/or his Sureties shall indemnify and save harmless the Owner of the project from any and all claims for infringement by reason of the use of such patented or copy-righted design, device or materials or any trademark or copy-right in connection with work agreed to be performed under this contract, and shall indemnify the Owner for any cost, expense, or damage which it may be obliged to pay by reason of such infringement at any time during the prosecution of the work or after completion of the work.

20. COPYRIGHT

No materials, to include but not limited to reports, maps, or documents produced as a result of this contract, in whole or in part, shall be available to the Contractor for copy-right purposes. Any such materials produced as a result of this contract that might be subject to copyright shall be the property of the Owner and all such rights shall belong to the Owner.

21. TERMINATION FOR CAUSE

If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner his obligations under this contract, or if the Contractor shall violate any of the covenants, agreements, or stipulations of this contract, the Owner shall thereupon have the right to terminate this contract by giving written notice to the Contractor of such termination and specifying the effective date

thereof, at least five (5) days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by the Contractor under this contract shall, at the option of the Owner, become the Owner's property and the Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder. Notwithstanding the above, the Contractor shall not be relieved of liability to the Owner for damages sustained by the Owner by virtue of any breach of the contract by the Contractor, and the Owner may withhold any payments to the Contractor for the purpose of set-off until such time as the exact amount of damages due the Owner from the Contractor is determined.

22. TERMINATION FOR CONVENIENCE

The Owner may terminate this contract at any time by giving at least ten (10) days notice in writing to the Contractor. If the contract is terminated by the Owner as provided herein, the Contractor will be paid for the time provided and expenses incurred up to the termination date.

23. ENERGY EFFICIENCY

The Contractor shall comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).

24. SUBCONTRACTS

- A. The Contractor shall not enter into any subcontract with any contractor who has been debarred, suspended, declared ineligible, or voluntarily excluded from participating in contacting programs by any agency of the United States Government or the State of Louisiana.
- B. The Contractor shall be as fully responsible to the Owner for the acts and omissions of the Contractor's contractors, and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by the Contractor.
- C. The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the work to bind contractor to the Contractor by the terms of the contract documents insofar as applicable to the work of contractors and to give the Contractor the same power as regards terminating any subcontract that the Owner may exercise over the Contractor under any provision of the contract documents.
- D. Nothing contained in this contract shall create any contractual relation between any Contractor and the Owner.

25. DEBARMENT, SUSPENSION, AND INELIGIBILITY

The Contractor represents and warrants that it and its contractors are not debarred, suspended, or placed in ineligibility status under the provisions of 2 CFR 200.213 (government debarment and suspension regulations).

26. PROTECTION OF LIVES AND HEALTH

The Contractor shall exercise proper precaution at all times for the protection of persons and property and shall be responsible for all damages to persons or property, either on or off the worksite, which occur as a result of his prosecution of the work. The safety provisions of applicable laws and building and construction codes, in addition to specific safety and health regulations described by Chapter XIII, Bureau of Labor Standards, Department of Labor, Part 1518, Safety and Health Regulations for Construction, as outlined in the Federal Register, Volume 36, No. 75, Saturday, April 17, 1971, Title 29 - LABOR, shall be observed and the Contractor shall take or cause to be taken, such additional safety and health measures as the Owner may determine to be reasonably necessary.

27. BREACH OF CONTRACT TERMS

Any violation or breach of terms of this contract on the part of the Contractor or the Contractor's contractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this contract. The duties and obligations imposed by the contract documents and the rights and remedies available there under shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

**28. PROVISIONS REQUIRED BY
LAW DEEMED INSERTED**

Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the contract shall forthwith be physically amended to make such insertion or correction.

29. CHANGES

The Owner may, from time to time, request changes in the scope of the services of the Contractor to be performed hereunder. Such changes, including any increase or decrease in the amount of the Contractor's compensation which are mutually agreed upon by and between the Owner and the Contractor, shall be incorporated in written and executed amendments to this Contract.

30. PERSONNEL

The Contractor represents that it has, or will secure at its own expense, all personnel required in performing the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the Owner.

All the services required hereunder will be performed by the Contractor or under its supervision, and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under State and local law to perform such services.

No person who is serving sentence in a penal or correctional institution shall be employed on work under this Contract.

31. ANTI-KICKBACK RULES

Salaries of personnel performing work under this Contract shall be paid unconditionally and not less often than once a month without payroll deduction or rebate on any account except only such payroll deductions as are mandatory by law or permitted by the applicable regulations issued by the Secretary of Labor pursuant to the "Anti-Kickback Act" of June 13, 1934 (48 Stat. 948; 62 Stat. 740; 63 Stat. 108; Title 18 U.S.C. 874; and Title 40 U.S.C. 276c). The Contractor shall comply with all applicable "Anti-Kickback" regulations and shall insert appropriate provisions in all subcontracts covering work under this contract to insure compliance by the contractors with such regulations, and shall be responsible for the submission of affidavits required of contractors there under except as the Secretary of Labor may specifically provide for variations of or exemptions from the requirements thereof.

32. ASSIGNABILITY

The Contractor shall not assign any interest in this Contract, and shall not transfer any interest in the same (whether by assignment or novation) without prior written approval of the Owner provided that claims for money due or to become due the Contractor from the Owner under this Contract may be assigned to a bank, trust company, or other financial institution, or to a Trustee in Bankruptcy, without such

approval. Notice of any such assignment or transfer shall be furnished promptly to the Owner.

33. INTEREST OF CONTRACTOR

The Contractor covenants that he presently has no interest and shall not acquire any interest direct or indirect in the above described project or any parcels therein or any other interest which would conflict in any manner or degree with the performance of his services hereunder. The Contractor further covenants that in the performance of this Contract no person having any such interest shall be employed.

34. POLITICAL ACTIVITY

The Contractor will comply with the provisions of the Hatch Act (5 U.S.C. 1501 et seq.), which limits the political activity of employees.

35. COMPLIANCE WITH THE OFFICE OF MANAGEMENT AND BUDGET

The parties agree to comply with the regulations, policies, guidelines, and requirements of the Office of Management and Budget, Circulars 2 CFR 200, as they relate to the use of Federal funds under this contract.

36. DISCRIMINATION DUE TO BELIEFS

No person with responsibilities in operation of the project to which this grant relates will discriminate with respect to any program participant or any applicant for participation in such program because of political affiliation or beliefs.

37. CONFIDENTIAL FINDINGS

All of the reports, information, data, etc., prepared or assembled by the Contractor under this Contract are confidential, and the Contractor agrees that they shall not be made available to any individual or organization without prior written approval of the Owner.

38. LOBBYING

The Contractor certifies, to the best of his or her knowledge and belief that:

1. No federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form LLL, "Disclosure

Form to Report Lobbying," in accordance with its instructions.

39. FEDERAL LABOR STANDARDS PROVISIONS

The Contractor shall abide by the requirements of the Federal Labor Standards Provisions (form HUD-4010) as follows.

Federal Labor Standards Provisions U.S. Department of Housing and Urban Development Office of Labor Relations

Applicability

The Project or Program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

A. 1. (i) Minimum Wages. All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv);

also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its contractors at the site of the work in a prominent and accessible, place where it can be easily seen by the workers.

(ii) (a) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable

relationship to the wage rates contained in the wage determination.

(b) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

(c) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1) (ii) (b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under

this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

2. Withholding. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same prime Contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the Contractor or any contractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site

of the work, all or part of the wages required by the contract, HUD or its designee may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the Contractor, disburse such amounts withheld for and on account of the Contractor or Contractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

3. (i) Payrolls and basic records. Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1 (b) (2) (B) of the Davis-bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall

maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

(ii) (a) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a) (3) (i). This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime Contractor is responsible for the submission of copies of payrolls by all contractors. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

(b) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or Contractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under 29 CFR 5.5 (a)(3)(i) and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph A.3.(ii)(b).

(d) The falsification of any of the above certifications may subject the Contractor or Contractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The Contractor or contractor shall make the records required under subparagraph A.3.(i) available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or Contractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the Contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and Trainees.

(i) **Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or contractor's registered program shall be observed. Every apprentice

must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage

determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate that is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

5. Compliance with Copeland Act requirements. The Contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract

6. Subcontracts. The Contractor or Contractor will insert in any subcontracts the clauses contained in subparagraphs 1 through 11 of this paragraph A and such other clauses as HUD or its designee may by appropriate instructions require, and a copy of the applicable prevailing wage decision, and also a clause requiring the contractors to

include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any Contractor or lower tier Contractor with all the contract clauses in this paragraph.

7. Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a Contractor and a Contractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act Requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its contractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

10. (i) Certification of Eligibility. By entering into this contract the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the

Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1 01 0, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of . . . influencing in any way the action of such Administration.... makes, utters or publishes any statement knowing the same to be false..... shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

11. Complaints, Proceedings, or Testimony by Employees. No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any contractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

B. Contract Work Hours and Safety Standards Act. The provisions of this paragraph B are applicable only where the amount of the prime contract exceeds \$100,000. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

(1) Overtime requirements. No Contractor or Contractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and

one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the Contractor and any Contractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and Contractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in subparagraph (1) of this paragraph.

(3) Withholding for unpaid wages and liquidated damages. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or contractor under any such contract or any other Federal contract with the same prime contract, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same prime Contractor such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or contractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

(4) Subcontracts. The Contractor or contractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the contractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any Contractor or lower tier contractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

C. Health and Safety. The provisions of this paragraph C are applicable only where the amount of the prime contract exceeds \$100,000.

(1) No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

(2) The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, 40 USC 3701 et seq.

(3) The Contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each contractor. The Contractor shall take such action with respect to any subcontract as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

40. SOLID WASTE DISPOSAL ACT

The Grantee shall comply with Section 6002 if the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery

Act. The requirements listed below include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) AT 40 CFR part 247 containing the highest percentage of recovered materials, practicable, consistent with maintaining a satisfactory level of competition.

Applicability.(a)(1) This guideline applies to all procurement actions using federal funding and involving items designated by EPA in this part, where the purchase price of the item exceeds \$10,000, the value of the quantity acquired by the preceding fiscal year exceeds \$10,000. This guideline shall require that all solid waste management services procurements are conducted in a manner that maximizes energy and resource recovery. (2) This guideline applies to any public agency using appropriated Federal funds to procure designated items, and to persons contracting with any such agencies with respect to work performed under such contracts. (3) The \$10,000 threshold applies to public agencies as a whole rather than to agency subgroups such as regional offices or sub-agencies of a larger department or agency.

(b) The term *procurement actions* includes:

- (1) Purchases made directly by a procuring agency or purchases made directly by any person (e.g., a contractor) in support of work being performed for a procuring agency using federal funds
- (2) Any purchases of designated items made “indirectly” by a procuring agency, as in the case of procurements resulting from grants, loans, funds, and similar forms of disbursements of monies.

(c)(1) This guideline does not apply to purchases of designated items which are unrelated to or incidental to Federal funding, i.e., not the direct result of a contract or agreement with, or a grant, loan, or funds disbursement to, a procuring agency.

41. CONFIDENTIALITY

The Contractor shall comply with the Confidentiality regulations, per 24 CFR 574.440. Per 24 CFR 574.440, “the [grantee](#) shall agree, and shall ensure that each [project sponsor](#) agrees, to ensure the confidentiality of the name of any individual assisted under this part and any other information regarding individuals receiving assistance.” The Contractor shall ensure all documentation and written agreements protect the confidentiality of all individuals/agencies funded or receiving any assistance under this grant.

42. REPAYMENT OF FUNDS

The Contractor acknowledges that funds provided through this Agreement are Federal funds administered by HUD and that all funds provided by this Agreement are subject to audit, disallowance, and repayment. Any disagreement with adverse findings by HUD may be challenged pursuant to Federal regulations, however, the Contractor shall promptly return to Grantee any and all funds that are found to be ineligible, unallowable, unreasonable, a duplication of benefits, or non-compliance, no matter the cause. This clause shall survive indefinitely the termination of this Agreement for any reason.

43. DUPLICATION OF BENEFITS

The Contractor shall not carry out any of the activities under this Agreement in a manner that results in a prohibited duplication of benefits as defined by Section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 USC §5155). The Contractor must comply with HUD’s requirements for duplication of benefits imposed by Federal Register notice on the City (81 Fed. Reg. 36564). The Federal Register notice requires compliance with the following HUD guidance documents: (1) the guidance published by HUD in the Federal

Register on November 16, 2011 (76 Fed. Reg. 71060); and (2) the guidance document entitled “HUD Guidance on Duplication of Benefit Requirements and Provision of CDBG Disaster Recover (DR) Assistance,” issued on July 25, 2013.

44. LIMITED ENGLISH PROFICIENCY (LEP)

Assistance to Those with Limited English Proficiency. The Contractor agrees to take all reasonable actions to communicate with persons who have Limited English Proficiency (LEP) to ensure that such persons have meaningful access and an equal opportunity to participate in the program(s) and/or services funded under this Agreement.

[ATTACHMENT K ON FOLLOWING PAGES]

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ATTACHMENT K
SAMPLE PROFESSIONAL SERVICES AGREEMENT

SAMPLE

**PROFESSIONAL SERVICES
AGREEMENT
BETWEEN
THE CITY OF NEW ORLEANS
AND
NAME OF CONTRACTOR**

RFQ/RFP NUMBER

TITLE OF RFQ/RFP

THIS PROFESSIONAL SERVICES AGREEMENT (the “Agreement”) is entered into by and between the City of New Orleans, represented by LaToya Cantrell, Mayor (the “City”), and **NAME OF CONTRACTOR**, represented by **NAME AND TITLE OF INDIVIDUAL INDICATED IN PROOF OF SIGNING AUTHORITY** (the “Contractor”). The City and the Contractor may sometimes collectively referred to as the “Parties.” The Agreement is effective as of the date of execution by the City (the “Effective Date”).

RECITALS

WHEREAS, on **DATE OF RFQ**, the City issued a request for qualifications **RFQ NUMBER** seeking qualified persons to provide professional services including **SHORT DESCRIPTION OF SERVICES** (the “RFQ”);

WHEREAS, the Contractor submitted a proposal dated **DATE OF PROPOSAL**, and the City has selected the Contractor to perform the professional services described in the RFQ.

WHEREAS, on **DATE OF RFP**, the City issued a request for proposals **RFP NUMBER** to qualified contractors under the RFQ to provide professional services

including **SHORT DESCRIPTION OF SERVICES** (the “RFP”); and

WHEREAS, the Contractor submitted a proposal dated **DATE OF PROPOSAL**, and the City has selected the Contractor to perform the professional services described in the RFP.

or

WHEREAS, on **DATE OF RFP**, the City issued a request for proposals **RFP NUMBER** seeking qualified persons to provide professional services including **SHORT DESCRIPTION OF SERVICES** (the “RFP”); and

WHEREAS, the Contractor submitted a proposal dated **DATE OF PROPOSAL**, and the City has selected the Contractor to perform the professional services described in the RFP.

NOW THEREFORE, the City and the Contractor agree as follows:

**ARTICLE I - THE CONTRACTOR’S
OBLIGATIONS**

A. **Services**. The Contractor will, in accordance with the schedule approved by the City:

1. **INSERT SCOPE OF SERVICES, TASKS, DELIVERABLES, AND/OR PERFORMANCE MEASURES IN ACCORDANCE WITH EITHER THE RFP OR CONTRACTOR’S PROPOSAL**;

2. Perform all other services and obligations as set forth in any the following documents that are incorporated fully into this Agreement: the RFP; the Contractor’s proposal dated **DATE OF PROPOSAL**.

3. Submit complete and accurate invoices, maintain records, submit

to audits and inspections, maintain insurance, and perform all other obligations of the Contractor as set forth in this Agreement;

4. Promptly correct any errors or omissions and any work deemed unsatisfactory or unacceptable by the City, at no additional compensation;

5. Monitor, supervise, and otherwise control and be solely responsible for all persons performing work on its behalf;

6. Perform all requirements set forth in La. R.S. 38:2192, including without limitation the payment of any associated costs, and submit a copy of any recorded documents to the City within thirty (30) days after the approval of the associated plan change or amendment; and

7. Cooperate with the City and any person performing work for the City.

The City's officers and employees are not authorized to request or instruct the Contractor to perform any work beyond the scope or duration of this Agreement in the absence of an executed amendment to this Agreement.

B. Standards. The Contractor, and any person performing work on its behalf, will perform all work under this Agreement in accordance with **IDENTITY ANY PROFESSIONAL OR OTHER STANDARDS YOU ARE AWARE OF AND THAT ARE SPECIFICALLY APPLICABLE TO THESE SERVICES.**

C. Compliance with Laws. The Contractor, and any person performing work on its behalf, will comply with all applicable federal, state, and local laws and ordinances, including, without limitation, **IDENTIFY ANY LEGAL REQUIREMENTS THAT YOU ARE AWARE OF AND THAT ARE SPECIFICALLY APPLICABLE TO THESE SERVICES.**

D. Schedule.

1. The Contractor will perform all work under this Agreement according to the following schedule:

INSERT APPLICABLE SCHEDULE

The Contractor will submit a proposed progress schedule to the City within fourteen (14) calendar days of receiving written authorization to proceed from the City. At a minimum, the proposed progress schedule must include the following information and be arranged so the actual progress can be shown as work is completed: **INSERT ANY APPLICABLE SCHEDULE REQUIREMENTS.**

2. The City has the sole right to approve, reject, or require changes to all schedules relating to the performance of this Agreement, including, without limitation, any proposed progress schedule and any requests for modifications.

3. The Contractor acknowledges and agrees that time is of the essence in the performance of this Agreement.

E. Invoices.

1. The Contractor will submit **INSERT CHOICE BETWEEN MONTHLY – QUARTERLY – OR OTHER** invoices for work performed under this Agreement to the City no later than ten (10) calendar days following the end of the period covered by the invoice. Untimely invoices may result in delayed payment for which the City is not liable. At a minimum, each invoice must include the following information and supporting documentation: **LIST INFORMATION AND DOCUMENTS REQUIRED TO BE SUBMITTED WITH INVOICE.**

2. All invoices must be signed by an authorized representative of the Contractor under penalty of perjury attesting to the validity and accuracy of the invoice.

3. The City may require changes to the form of the invoice and may require additional supporting documentation to be submitted with invoices.

F. Records and Reporting.

1. The Contractor will maintain all books, documents, papers, accounting records, invoices, materials records, payrolls, work papers, personnel records, and other evidence pertaining to the performance of services under this Agreement, including, without limitation, of costs incurred through the later of XXXX years from: (a) the completion of this Agreement (including any renewal or extension periods); or (b) from the resolution of any dispute relating to the Agreement. If this Agreement is terminated for any reason, the Contractor will deliver to the City all plans and records of work compiled through the date of termination.

2. The Contractor will identify any reporting requirements, including the frequency, method and contents.

3. The Contractor is solely responsible for the relevance and accuracy of all items and details included in any reports relating to the work performed under this Agreement, regardless of any review by the City.

G. Audit and Inspection.

1. The Contractor will submit to any City audit, inspection, and review and, at the City's request, will make available all documents relating or pertaining to this Agreement maintained by or under the control of the Contractor, its employees, agents, assigns, successors and subcontractors, during normal business hours at the Contractor's office or place of business in Louisiana. If no such location is available, the Contractor will make the documents available at a time and location that is convenient for the City.

2. The Contractor will abide by all provisions of City Code § 2-1120, including but not limited to City Code § 2-1120(12), which requires the Contractor to provide the Office of Inspector General with documents and information as requested. Failure to comply with such requests shall

constitute a material breach of the contract. The Contractor agrees that it is subject to the jurisdiction of the Orleans Parish Civil District Court for purposes of challenging a subpoena.

H. Insurance.

1. Except as otherwise noted, at all times during this Agreement or the performance of work required by this Agreement, the Contractor will maintain the following insurance in full force and effect for the duration of the work under this Agreement:

**INSERT ANY
APPLICABLE
INSURANCE
REQUIREMENTS
APPROVED BY THE
CITY'S RISK
MANAGER**

a. Minimum Requirements:

- i.** Commercial General Liability ("CGL"):
- ii.** Worker's Compensation:
- iii.** Professional Liability (Errors and Omissions):

b. Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions:

- i.** Additional Insured Status.
- ii.** Primary Coverage.
- iii.** Claims Made Policies.
- iv.** Waiver of Subrogation.

- v. Notice of Cancellation.
- vi. Acceptability of Insurers.

2. The Contractor will provide the City's Risk Manager (at City of New Orleans Attn: Risk Manager, 1300 Perdido Street, Suite 9E06, New Orleans, LA 70112 – Ref.: RFP or RFQ No. xxxxxx) within ten (10) calendar days of the Effective Date and at any other time at the City's request the following documents:

- a. Proof of coverage for each policy of insurance required by this Agreement;
- b. Copy of the fully executed Agreement;
- c. Copies of all policies of insurance, including all policies, forms, and endorsements; and
- d. Statements disclosing any policy aggregate limit.

3. Without notice from the City, the Contractor will:

- a. Replenish any policy aggregate limit that is impaired before commencement of any work or continuation of any work under this Agreement;
- b. Substitute insurance coverage acceptable to the City within thirty (30) calendar days if any insurance company providing any insurance with respect to this Agreement is declared bankrupt, becomes insolvent, loses the right to do business in Louisiana, or ceases to

meet the requirements of this Agreement; and

- c. Notify the City's Risk Manager in writing within forty-eight (48) hours of its receipt of any notice of non-renewal, cancellation, or reduction in coverage or limits affecting any policy of insurance maintained under this Agreement.

I. Indemnity.

1. To the fullest extent permitted by law, the Contractor will indemnify, defend, and hold harmless the City, its agents, employees, officials, insurers, self-insurance funds, and assigns (collectively, the "**Indemnified Parties**") from and against any and all claims, demands, suits, and judgments of sums of money accruing against the Indemnified Parties: for loss of life or injury or damage to persons or property arising from or relating to any act or omission or the operation of the Contractor, its agents, subcontractors, or employees while engaged in or in connection with the discharge or performance of any work under this Agreement; and for any and all claims and/or liens for labor, services, or materials furnished to the Contractor in connection with the performance of work under this Agreement.

2. The Contractor's indemnity does not extend to any loss arising from the gross negligence or willful misconduct of any of the Indemnified Parties, provided that neither the Contractor nor any of its agents, subcontractors, or employees contributed to such gross negligence or willful misconduct.

3. The Contractor has an immediate and independent obligation to, at the City's option: (a) defend the City from or (b) reimburse the City for its costs incurred in the defense of any claim that actually or potentially falls within this indemnity, even if: (a) the allegations are or

may be groundless, false, or fraudulent; or
(b) the Contractor is ultimately absolved from liability.

ARTICLE II - REPRESENTATIONS AND WARRANTIES

A. The Contractor represents and warrants to the City that:

1. The Contractor, through its duly authorized representative, has the full power and authority to enter into and execute this Agreement;

2. The Contractor has the requisite expertise, qualifications, staff, materials, equipment, licenses, permits, consents, registrations, and certifications in place and available for the performance of all work required under this Agreement;

3. The Contractor is bonded, if required by law, and fully and adequately insured for any injury or loss to its employees and any other person resulting from the actions or omissions of the Contractor, its employees, or its subcontractors in the performance of this Agreement;

4. The Contractor is not under any obligation to any other person that is inconsistent or in conflict with this Agreement or that could prevent, limit, or impair the Contractor's performance of this Agreement;

5. The Contractor has no knowledge of any facts that could prevent, limit, or impair the performance of this Agreement, except as otherwise disclosed to the City and incorporated into this Agreement;

6. The Contractor is not in breach of any federal, state, or local statute or regulation applicable to the Contractor or its operations;

7. Any rate of compensation established for the performance of services under this Agreement are no higher than those charged to the Contractor's most

favorable customer for the same or substantially similar services;

8. The Contractor has read and fully understands this Agreement and is executing this Agreement willingly and voluntarily; and

9. All of the representations and warranties in this Article and elsewhere in this Agreement are true and correct as of the date of this Agreement by the Contractor and the execution of this Agreement by the Contractor's representative constitutes a sworn statement, under penalty of perjury, by the Contractor as to the truth of the foregoing representations and warranties.

B. **Convicted Felon Statement.** The Contractor complies with City Code § 2-8(c) and no principal, member, or officer of the Contractor has, within the preceding five years, been convicted of, or pled guilty to, a felony under state or federal statutes for embezzlement, theft of public funds, bribery, or falsification or destruction of public records.

C. **Non-Solicitation Statement.** The Contractor has not employed or retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement. The Contractor has not paid or agreed to pay any person, other than a bona fide employee working for it, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from this Agreement.

D. **Employee Verification.** The Contractor swears that (i) it is registered and participates in a status verification system to verify that all employees in the State of Louisiana are legal citizens of the United States or are legal aliens; (ii) it shall continue, during the term of this Agreement, to utilize a status verification system to verify the legal status of all new employees in the State of Louisiana; and (iii) it shall require all subcontractors to submit to the Contractor a sworn affidavit verifying compliance with items (i) and (ii) above.

Any violation of the provisions of this paragraph may subject this Agreement to termination, and may further result in the Contractor being ineligible for any public contract for a period of three years from the date the violation is discovered. The Contractor further acknowledges and agrees that it shall be liable for any additional costs incurred by the City occasioned by the termination of this Agreement or the loss of any license or permit to do business in the State of Louisiana resulting from a violation of this provision. The Contractor will provide to the City a sworn affidavit attesting to the above provisions if requested by the City. The City may terminate this Agreement for cause if the Contractor fails to provide such the requested affidavit or violates any provision of this paragraph.

E. The Contractor acknowledges that the City is relying on these representations and warranties and Contractor's expertise, skill, and knowledge and that the Contractor's obligations and liabilities will not be diminished by reason of any approval by the City.

ARTICLE III - THE CITY'S OBLIGATIONS

A. **Administration.** The City will:

1. Administer this Agreement through the **NAME OF THE CITY DEPARTMENT RESPONSIBLE FOR MONITORING THIS AGREEMENT;**

2. Provide the Contractor **IDENTIFY ANY SPECIFIC DOCUMENTS TO BE PROVIDED** and other documents deemed necessary for the Contractor's performance of any work required under this Agreement;

3. Provide access to Department personnel to discuss the required services during normal working hours, as requested by the Contractor; and

4. **INSERT ANY ADDITIONAL OBLIGATIONS FOR THE CITY.**

B. **Payment.** The City will make payments to the Contractor at the rate of compensation established in this Agreement based upon the Contractor's certified invoices, except:

1. The City's obligation to pay is contingent upon the Contractor's: (a) submission of a complete and accurate invoice; (b) satisfactory performance of the services and conditions required by this Agreement;

2. The City, in its discretion, may withhold payment of any disputed amounts, and no interest shall accrue on any amount withheld pending the resolution of the dispute;

3. The City may set off any amounts due to the Contractor against any amounts deemed by the City to be owed to the City by the Contractor pursuant this Agreement; and

4. All compensation owed to the Contractor under this Agreement is contingent upon the appropriation and allocation of funds for work under this Agreement by the City.

5. The City is not obligated under any circumstances to pay for any work performed or costs incurred by the Contractor that: exceed the maximum aggregate amount payable established by this Agreement; are beyond the scope or duration of this Agreement; arise from or relate to the any change order within the scope of the Agreement; are for services performed on days on which services were suspended, due to circumstances beyond the control of the City, and no work has taken place; arise from or relate to the correction of errors or omissions of the Contractor or its subcontractors; or the City is not expressly obligated to pay under this Agreement.

6. If this Agreement is terminated for any reason, the City will pay the Contractor only for the work requested by the City and satisfactorily performed by

the Contractor through the date of termination, except as otherwise provided in this Agreement.

ARTICLE IV - COMPENSATION

A. Rate of Compensation.

1. The City will pay the Contractor in accordance with the following rate: **INSERT RATE OF COMPENSATION.**

2. This Agreement does not guarantee any amount of work or compensation except as specifically authorized by the City in accordance with the terms and conditions of this Agreement.

3. The stated compensation is inclusive, and includes no additional amounts for, the Contractor's costs, including without limitation all expenses relating to overhead, administration, subcontractors, employees, bid preparation, bonds, scheduling, invoicing, insurance, record retention, reporting, inspections, audits, the correction of errors and omissions, or minor changes within the scope of this Agreement. The City will not consider or be obligated to pay or reimburse the Contractor any other charges or fees and the Contractor will not be entitled to any additional compensation or reimbursement, except otherwise specifically provided in the Agreement

4. The Contractor immediately will notify the City in writing of any reduction to the rate of compensation for its most favored customer and the rate of compensation established by this Agreement automatically will adjust to the reduced rate effective as of the effective date of the reduction for the most favored customer.

B. Maximum Amount. The maximum aggregate amount payable by the City under this Agreement is **INSERT WRITTEN MAXIMUM DOLLAR AMOUNT** Dollars and **INSERT WRITTEN MAXIMUM CENTS AMOUNT** Cents (**INSERT**

NUMERICAL MAXIMUM DOLLAR AMOUNT).

ARTICLE V - DURATION AND TERMINATION

A. Initial Term. The term of this agreement shall be for one (1) year, beginning the Effective Date, provided there is an encumbrance of funds by the requesting department made from the funds allotted by the Chief Administrative Officer, which are derived from appropriations made by the City Council. This Agreement shall automatically terminate with respect to any period of time for which funds are not so encumbered.

B. Extension. This Agreement may be extended at the option of the City, provided that funds are allocated by the City Council and the extension of the Agreement facilitates the continuity of services provided herein. This Agreement may be extended by the City for four (4) additional one-year terms.

C. Termination for Convenience. The City may terminate this Agreement at any time during the term of the Agreement by giving the Contractor written notice of the termination at least thirty (30) calendar days before the intended date of termination.

D. Termination for Non-Appropriation. This Agreement will terminate immediately in the event of non-appropriation of funds sufficient to maintain this Agreement without the requirement of notice and the City will not be liable for any amounts beyond the funds appropriated and encumbered for this Agreement.

E. Termination for Cause. The City may terminate this Agreement immediately for cause by sending written notice to the Contractor. "Cause" includes without limitation any failure to perform any obligation or abide by any condition of this Agreement or the failure of any representation or warranty in this Agreement, including without limitation any failure to comply with the requirements of

the City's Disadvantaged Business Enterprise program and any failure to comply with any provision of City Code § 2-1120 or requests of the Office of Inspector General. If a termination for cause is subsequently challenged in a court of law and the challenging party prevails, the termination will be deemed to be a termination for convenience effective thirty (30) days from the date of the original written notice of termination for cause was sent to the challenging party; no further notice will be required.

F. Suspension. The City may suspend this Agreement at any time and for any reason by giving two (2) business day's written notice to the Contractor. The Contractor will resume work upon five (5) business day's written notice from the City.

ARTICLE VI – DECLARED DISASTER

A. Declaration. During the declaration of an emergency by federal, state, and/or local government, the Contractor shall provide support to the City on an as-needed and task-order-driven basis. Because of the uncertainty of the scale and/or type of emergency, the services to be provided by the Contractor will vary and may need to be adjusted as needs are identified. The Contractor may be requested to provide a range of services. Said services may need to be rendered on a continual basis (24 hours / 7 days per week) during the declaration of an emergency.

B. Task Order. Notification and Personnel. Prior or during the declaration of an emergency, the City will notify the Contractor via task order if the City requires the Contractor's support. Upon activation by task order, the Contractor will provide the City with contact information of personnel assigned to the task order; and coordinate with the City to identify any personnel available to meet the City's needs.

C. Purchase Order. Once services are identified, the City will issue a purchase order to the Contractor. The City will issue a subsequent purchase order in case of

additional needs for services, or may issue a modified purchase order if changes are made to the initial purchase order.

D. The Contractor will ensure that the City is provided with timely and accurate reports and other documentation, as requested.

ARTICLE VII - PERFORMANCE MEASURES

A. Factors. the City will measure the performance of the Contractor according to the following non-exhaustive factors: work performed in compliance with the terms of the Agreement; staff availability; staff training; staff professionalism; staff experience; customer service; communication and accessibility; prompt and effective correction of situations and conditions; timeliness and completeness of submission of requested documentation (such as records, receipts, invoices, insurance certificates, and computer-generated reports).

B. Failure to Perform. If the Contractor fails to perform according to the Agreement, the City will notify the Contractor. If there is a continued lack of performance after notification, the City may declare the Contractor in default and may pursue any appropriate remedies available under the Agreement and/or any applicable law. In the event of a notification of default, the City will invoice the defaulting contractor for any increase in costs and other damages sustained by the City. Further, the City will seek full recovery from the defaulting contractor.

ARTICLE VIII – LIVING WAGES

A. Definitions. Unless otherwise expressly provided in this Agreement, Capitalized terms used but not defined herein, shall have the definition attributed to them in Article VIII, Section 70-802 of the City Code.

B. Compliance. To the fullest extent permitted by law, the Contractor agrees to abide by City Code Sections 70-

801, *et seq.*, which requires, in pertinent part, the following:

1. Payment of an hourly wage to Covered Employees equal to the amounts defined in the City Code (“**Living Wage**”);
2. Receipt of at least seven (7) days per year of compensated leave for Covered Employees, as required by Section 70-807 of the City Code; and
3. Post notice in a prominent place regarding the applicability of the Living Wage Ordinance in every workplace in which Covered Employees are working that is within the Covered Employer's custody and control, as required by Section 70-810 of the City Code.

C. Current Living Wage. In accordance with the Living Wage Ordinance, the current Living Wage per the Consumer Price Index data is equal to \$11.19. The Contractor shall be responsible for confirming the Current Living Wage by visiting <https://www.nola.gov/economic-development/workforce-development/>.

D. Adjusted Living Wage. In accordance with Section 70-806(2) of the City Code, the Contractor acknowledges and agrees that the Living Wage may be increased during the term of the Agreement. Any City contract or City financial assistance agreement (a) extending from one calendar year into the next or (b) with a term of longer than one year, inclusive of any renewal terms or extensions, shall require the Covered Employer to pay the Covered Employee an Adjusted Living Wage, accounting for the annual Consumer Price Index adjustment. The indexing adjustment shall occur each year on July 1st using the Consumer Price Index figures provided for the calendar year ended December 31st of

the preceding year, and thereafter on an annual basis.

E. Subcontract Requirements. As required by Section 70-804 of the City Code, the Contractor, beneficiary, or other Covered Employer, prior to entering into a subcontract, shall notify subcontractors in writing of the requirements and applicability of Article VIII – The Living Wage Ordinance (“**Article**”). City contractors and beneficiaries shall be deemed responsible for violations of this Article by their subcontractors.

F. Reporting. On or before January 31st and upon request by the City, the Contractor shall identify (a) the hourly wage earned by the lowest paid Covered Employee and (b) the number of days of compensated leave received by Covered Employees earning less than 130% of the then-prevailing wage during the current term of the Agreement, and provide the identified information to the following:

Office of Workforce Development
Living Wage - Compliance
1340 Poydras Street – Suite 1800
New Orleans, Louisiana 70112

G. Compliance Monitoring. Covered Employers under this Agreement are subject to compliance monitoring and enforcement of the Living Wage requirements by the Office of Workforce Development (the “**OWD**”) and/or the Chief Administrative Office (“**CAO**”). Covered Employers will cooperate fully with the OWD and/or the CAO and other City employees and agents authorized to assist in the administration and enforcement of the Living Wage requirements. Steps and actions include, but are not limited to, requirements that: (i) the Contractor will cooperate fully with the OWD and the CAO and other City employees and agents authorized to assist in the administration and enforcement of the Living Wage requirements; (ii) the Contractor agrees that the OWD and the CAO and their designees,

in the performance of their duties, shall have the right to engage in random inspections of job sites and to have access to the employees of the Contractor, payroll records and employee paychecks; and (ii) that the City may audit such records of the Contractor as he or she reasonably deems necessary to determine compliance with the Living Wage standards.

H. Remedies. If the Contractor fails to comply with the Living Wage requirements during the term of the Agreement, said failure may result in termination of the Agreement or the pursuit of other remedies by the City, including, but not limited to, the penalties and enforcement mechanisms set forth in Section 70-811 of the City Code.

ARTICLE IX - DISADVANTAGED BUSINESS ENTERPRISE ("DBE") PROGRAM

A. In General. The Contractor agrees to abide by the City Code sections 70-496, *et seq.*, to use its best efforts to carry out all applicable requirements of the City's DBE Program for the administration of this Agreement, as set forth in the City Code and any applicable rules adopted thereunder. The City's Office of Supplier Diversity ("**OSD**") oversees the DBE Program and assigns a DBE Compliance Officer ("**DBECO**") to ensure compliance.

B. Monitoring. To ensure compliance with DBE requirements during the term of this Agreement, the DBECO will monitor the Contractor's use of DBE subcontractors/suppliers ("**DBE Entities**") through the following actions:

1. Job site visits;
2. Electronic payment tracking via the Contract Compliance Monitoring System or other means as approved by the OSD;
3. Routine audits of contract payments to all subcontractors;

4. Reviewing of records and reports; and/or
5. Interviews of selected personnel.

The DBECO may schedule inspections and on-site visits with or without prior notice to the Contractor or DBE Entities.

C. Cooperation. The Contractor shall:

1. Designate an individual as the "DBE Liaison" who will monitor the Contractor's DBE participation as well as document and maintain records of "Good Faith Efforts" with DBE Entities.
2. Execute written contracts with DBE Entities that meet the applicable DBE goals.
 - a. The Contractor shall provide the DBECO with copies of said contracts within thirty (30) days from the date this Agreement is fully executed between the City and the Contractor.
 - b. The Contractor shall agree to promptly pay subcontractors, including DBE Entities, in accordance with law.
3. Establish and maintain the following records for review upon request by the OSD:
 - a. Copies of written contracts with DBE Entities and purchase orders;
 - b. Documentation of payments and other transactions with DBE Entities;

- c. Appropriate explanations of any changes or replacements of DBE Entities, which may include a record of “Post-Award Good Faith Efforts” for each certified firm that the Contractor does not use in accordance with the approved DBE participation submission;
- d. Any other records required by the OSD.

The Contractor is required to maintain such records for three (3) years after completion or closeout of this Agreement. Such records are necessary to determine compliance with their DBE obligations.

- 4. Post monthly payments and submit regular reports to the DBECO as required via the online “Contract Compliance Monitoring System” or other means approved by the OSD.
 - a. The Contractor shall submit the initial report outlining DBE participation within thirty (30) days from the date of notice to proceed (or equivalent document) issued by the City to the Contractor. Thereafter, “DBE Utilization” reports shall be due on or before the fifteenth (15th) day of each month until all DBE subcontracting work is completed.

- b. Reports are required even when no activity has occurred in a monthly period.
- c. If the established percentage is not being met, the monthly report shall include a narrative description of the progress being made in DBE participation.
- d. The Contractor may also be required to attach or upload copies of canceled checks or bank statements that identify payer, payee and amount of transfer to verify payment information as indicated on the form.

5. Conform to the established percentage as approved by the OSD.

- a. The total dollar amount of the Agreement shall include approved change orders and amendments. For a requirements contract, the total dollar amount shall be based in actual quantities ordered.
- b. No changes to the established percentage and DBE Entities submitted on DBE Compliance Form-1 shall be allowed without approval by the OSD.
- c. The City will not adjust the contract for

any increase in cost due to replacement of DBE Entities.

D. Post-Award Modification. The OSD may grant a post-award modification request if:

- a. for a reason beyond the Contractor's control, the Contractor is unable to use the certified DBE entity submitted on DBE Compliance Form-1 to perform the specified work. The Contractor must notify the OSD of the intent for removal and substitution of a certified DBE immediately upon determination of that the DBE submitted on Compliance Form -1 is unable to perform the specified work. In such case, the Contractor shall use and document "Good Faith Efforts" to find a similarly qualified and certified DBE entity to perform such specified work. The same criteria used for establishing "Good Faith Efforts" in maximizing the participation of DBE Entities prior to awarding the Agreement will also apply to the substitution of DBE subcontractors during the

performance of the Agreement; or

- b. the Contractor reasonably believes that, due to a change of scope, execution of the work in accordance with the directions from the City is unlikely to meet the established percentage or terms. In such case, the Contractor shall use and document "Good Faith Efforts" to achieve a reasonable amount of DBE participation on the remaining work on the Agreement.

ARTICLE X – FORCE MAJEURE

A. Event. An event of Force Majeure will include any event or occurrence not reasonably foreseeable by the City at the execution of this Agreement, which will include, but not be limited to, abnormally severe and unusual weather conditions or other acts of God (including tropical weather events, tornados, hurricanes, and flooding); declarations of emergency; shortages of labor or materials (not caused by City); riots; terrorism; acts of public enemy; war; sabotage; cyber-attacks, threats, or incidents; epidemics or pandemics; court or governmental order; or any other cause whatsoever beyond the reasonable control of City, provided such event was not caused by the negligence or misconduct of City, by the failure of City to comply with applicable laws, or by the breach of this Agreement.

B. Notice. To seek the benefit of this Article, the City must provide notice in writing to the Contractor stating: (1) an event triggering this Article has occurred; (2) the anticipated effect of the Force Majeure event on performance; and (3) the

expected duration of the delay, if the Agreement is being suspended

C. Effect.

1. Upon the occurrence of a Force Majeure event, for which the City has provided required notice, the City may, at its sole discretion:

a. Suspend this Agreement for a duration to be set by the City, not to exceed 90 days. During such time of suspension, the Parties will not be liable or responsible for performance of their respective obligations under this Agreement, and there will be excluded from the computation of such period of time any delays directly due to the occurrence of the Force Majeure event. During any such period of suspension, the Contractor must take all commercially reasonable actions to mitigate against the effects of the Force Majeure event and to ensure the prompt resumption of performance when so instructed by the City; or

b. Terminate this Agreement, either immediately or after one or more periods of suspension, effective on notice to Contractor and

without any further compensation due.

2. Notwithstanding Section C(1) above, the obligations relating to making payments when due (for services or materials already provided) and those obligations specified to survive in the Agreement will be unaffected by any suspension or termination.

ARTICLE XI - NON-DISCRIMINATION

A. Equal Employment Opportunity.

In all hiring or employment made possible by, or resulting from this Agreement, the Contractor (1) will not be discriminate against any employee or applicant for employment because of race, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry, and (2) where applicable, will take affirmative action to ensure that the Contractor's employees are treated during employment without regard to their race, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry. This requirement shall apply to, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. All solicitations or advertisements for employees shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry.

B. Non-Discrimination. In the performance of this Agreement, the Contractor will not discriminate on the basis, whether in fact or perception, of a

person's race, color, creed, religion, national origin, ancestry, age, sex (gender), sexual orientation, gender identity, domestic partner status, marital status, physical or mental disability, or AIDS- or HIV-status against (1) any employee of the City working with the Contractor in any of Contractor's operations within Orleans Parish or (2) any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by the Contractor. The Contractor agrees to comply with and abide by all applicable federal, state and local laws relating to non-discrimination, including, without limitation, Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990.

C. Incorporation into Subcontracts. The Contractor will incorporate the terms and conditions of this Article into all subcontracts, by reference or otherwise, and will require all subcontractors to comply with those provisions.

D. The City may terminate this Agreement for cause if the Contractor fails to comply with any obligation in this Article, which failure is a material breach of this Agreement.

ARTICLE XII - INDEPENDENT CONTRACTOR

A. Independent Contractor Status. The Contractor is an independent contractor and shall not be deemed an employee, servant, agent, partner, or joint venture of the City and will not hold itself or any of its employees, subcontractors or agents to be an employee, partner, or agent of the City.

B. Exclusion of Worker's Compensation Coverage. The City will not be liable to the Contractor, as an independent contractor as defined in La. R.S. 23:1021(6), for any benefits or coverage as provided by the Workmen's Compensation Law of the State of

Louisiana. Under the provisions of La. R.S. 23:1034, any person employed by the Contractor will not be considered an employee of the City for the purpose of Worker's Compensation coverage.

C. Exclusion of Unemployment Compensation Coverage. The Contractor, as an independent contractor, is being hired by the City under this Agreement for hire and defined in La. R.S. 23:1472(E) and neither the Contractor nor anyone employed by it will be considered an employee of the City for the purpose of unemployment compensation coverage, which coverage same being hereby expressly waived and excluded by the parties, because: (a) the Contractor has been and will be free from any control or direction by the City over the performance of the services covered by this contract; (b) the services to be performed by the Contractor are outside the normal course and scope of the City's usual business; and (c) the Contractor has been independently engaged in performing the services required under this Agreement prior to the date of this Agreement.

D. Waiver of Benefits. The Contractor, as an independent contractor, will not receive from the City any sick and annual leave benefits, medical insurance, life insurance, paid vacations, paid holidays, sick leave, pension, or Social Security for any services rendered to the City under this Agreement.

ARTICLE XIII - NOTICE

A. In General. Except for any routine communication, any notice, demand, communication, or request required or permitted under this Agreement will be given in writing and delivered in person or by certified mail, return receipt requested as follows:

1. To the City:

**NAME AND ADDRESS
OF THE CITY
DEPARTMENT
RESPONSIBLE FOR**

**MONITORING THIS
AGREEMENT**

&

City Attorney
City of New Orleans
1300 Perdido Street, Suite
5E03
New Orleans, LA 70112

2. To the Contractor:

**NAME AND ADDRESS
OF POINT OF CONTACT
FOR CONTRACTOR TO
RECEIVE NOTICES**

B. Effectiveness. Notices are effective when received, except any notice that is not received due to the intended recipient's refusal or avoidance of delivery is deemed received as of the date of the first attempted delivery.

C. Notification of Change. Each party is responsible for notifying the other in writing that references this Agreement of any changes in its address(es) set forth above.

**ARTICLE XIV - ADDITIONAL
PROVISIONS**

A. Amendment. No amendment of or modification to this Agreement shall be valid unless and until executed in writing by the duly authorized representatives of both parties to this Agreement.

B. Assignment. This Agreement and any part of the Contractor's interest in it are not assignable or transferable without the City's prior written consent.

C. Choice of Law. This Agreement will be construed and enforced in accordance with the laws of the State of Louisiana without regard to its conflict of laws provisions.

D. Conflicting Employment. To ensure that the Contractor's efforts do not conflict with the City's interests, and in recognition of the Contractor's obligations to the City, the Contractor will decline any

offer of other employment if its performance of this Agreement is likely to be adversely affected by the acceptance of the other employment. The Contractor will promptly notify the City in writing of its intention to accept the other employment and will disclose all possible effects of the other employment on the Contractor's performance of this Agreement. The City will make the final determination whether the Contractor may accept the other employment.

E. Construction of Agreement. Neither party will be deemed to have drafted this Agreement. This Agreement has been reviewed by all parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of all parties. No term of this Agreement shall be construed or resolved in favor of or against the City or the Contractor on the basis of which party drafted the uncertain or ambiguous language. The headings and captions of this Agreement are provided for convenience only and are not intended to have effect in the construction or interpretation of this Agreement. Where appropriate, the singular includes the plural and neutral words and words of any gender shall include the neutral and other gender.

F. Entire Agreement. This Agreement, including all incorporated documents, constitutes the final and complete agreement and understanding between the parties. All prior and contemporaneous agreements and understandings, whether oral or written, are superseded by this Agreement and are without effect to vary or alter any terms or conditions of this Agreement.

G. Exhibits. The following exhibits will be and are incorporated into this Agreement: **INSERT LIST OF ALL EXHIBITS.**

H. Jurisdiction. The Contractor consents and yields to the jurisdiction of the State Civil Courts of the Parish of Orleans

and formally waives any pleas or exceptions of jurisdiction on account of the residence of the Contractor.

I. Limitations of the City's Obligations. The City has no obligations not explicitly set forth in this Agreement or any incorporated documents or expressly imposed by law.

J. No Third Party Beneficiaries. This Agreement is entered into for the exclusive benefit of the parties and the parties expressly disclaim any intent to benefit anyone not a party to this Agreement.

K. Non-Exclusivity. This Agreement is non-exclusive and the Contractor may provide services to other clients, subject to the City's approval of any potential conflicts with the performance of this Agreement and the City may engage the services of others for the provision of some or all of the work to be performed under this Agreement.

L. Non-Waiver. The failure of either party to insist upon strict compliance with any provision of this Agreement, to enforce any right or to seek any remedy upon discovery of any default or breach of the other party at such time as the initial discovery of the existence of such noncompliance, right, default or breach shall not affect or constitute a waiver of either party's right to insist upon such compliance, exercise such right or seek such remedy with respect to that default or breach or any prior contemporaneous or subsequent default or breach.

M. Order of Documents. In the event of any conflict between the provisions of this Agreement any incorporated documents, the terms and conditions of the documents will apply in this order: the Agreement; **INSERT ANY APPLICABLE.**

N. Ownership Interest Disclosure. The Contractor will provide a sworn affidavit listing all natural or artificial

persons with an ownership interest in the Contractor and stating that no other person holds an ownership interest in the Contractor via a counter letter. For the purposes of this provision, an "ownership interest" shall not be deemed to include ownership of stock in a publicly traded corporation or ownership of an interest in a mutual fund or trust that holds an interest in a publicly traded corporation. If the Contractor fails to submit the required affidavits, the City may, after thirty (30) days' written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payments until such the required affidavits are submitted.

O. Prohibition of Financial Interest in Agreement. No elected official or employee of the City shall have a financial interest, direct or indirect, in this Agreement. For purposes of this provision, a financial interest held by the spouse, child, or parent of any elected official or employee of the City shall be deemed to be a financial interest of such elected official or employee of the City. Any willful violation of this provision, with the expressed or implied knowledge of Contractor, shall render this Agreement voidable by the City and shall entitle the City to recover, in addition to any other rights and remedies available to the City, all monies paid by the City to Contractor pursuant to this Agreement without regard to Contractor's otherwise satisfactory performance of the Agreement.

P. Prohibition on Political Activity. None of the funds, materials, property, or services provided directly or indirectly under the terms of this Agreement shall be used in the performance of this Agreement for any partisan political activity, or to further the election or defeat of any candidate for public office.

Q. Remedies Cumulative. No remedy set forth in the Agreement or otherwise conferred upon or reserved to any party shall be considered exclusive of any other remedy available to a party. Rather,

each remedy shall be deemed distinct, separate and cumulative and each may be exercised from time to time as often as the occasion may arise or as may be deemed expedient.

R. Severability. Should a court of competent jurisdiction find any provision of this Agreement to be unenforceable as written, the unenforceable provision should be reformed, if possible, so that it is enforceable to the maximum extent permitted by law or, if reformation is not possible, the unenforceable provision shall be fully severable and the remaining provisions of the Agreement remain in full force and effect and shall be construed and enforced as if the unenforceable provision was never a part the Agreement.

IN CASE OF USE OF CDBG FUNDS, ADD THIS PROVISION:

S. Special Conditions for CDBG Contracts. The “CDBG Compliance Provisions for Professional Services Contracts,” attached as Exhibit “___” to this Agreement, are expressly incorporated in the Agreement and will be effective, notwithstanding any provision of the Agreement or any incorporated documents, to the contrary, upon the City’s notice to the Contractor that the City intends to seek reimbursement from the Community Development Block Grant Program in connection with the work to be performed under this Agreement.

T. Subcontractor Reporting. The Contractor will provide a list of all natural or artificial persons who are retained by the Contractor at the time of the Agreement’s execution and who are expected to perform work as subcontractors in connection with the Contractor’s work for the City. For any subcontractor proposed to be retained by the Contractor to perform work on the Agreement with the City, the Contractor must provide notice to the City within thirty (30) days of retaining that subcontractor. If the Contractor fails to submit the required

lists and notices, the City may, after thirty (30) days’ written notice to the Contractor, take any action it deems necessary, including, without limitation, causing the suspension of any payments, until the required lists and notices are submitted.

U. Survival of Certain Provisions. All representations and warranties and all obligations concerning record retention, inspections, audits, ownership, indemnification, payment, remedies, jurisdiction, choice of law, and **IDENTIFY ANY OTHER PROVISIONS THAT SHOULD SURVIVE TERMINATION** shall survive the expiration, suspension, or termination of this Agreement and continue in full force and effect.

V. Terms Binding. The terms and conditions of this Agreement are binding on any heirs, successors, transferees, and assigns.

ARTICLE XV - COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original copy of this Agreement, but all of which, when taken together, shall constitute one and the same agreement.

ARTICLE XVI - ELECTRONIC SIGNATURE AND DELIVERY

The Parties agree that a manually signed copy of this Agreement and any other document(s) attached to this Agreement delivered by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement. No legally binding obligation shall be created with respect to a party until such party has delivered or caused to be delivered a manually signed copy of this Agreement.

[The remainder of this page is intentionally left blank]

[SIGNATURES CONTAINED ON NEXT PAGE]

Printed Name: _____

IN WITNESS WHEREOF, the City
and the Contractor, through their duly
authorized representatives, execute this
Agreement.

NAME OF
CONTRACTOR

CITY OF NEW ORLEANS

BY: _____ BY: _____
LaTOYA CANTRELL,
MAYOR

Executed on this _____
of _____
_____, 20__

NAME AND TITLE OF
INDIVIDUAL
INDICATED IN PROOF
OF SIGNING
AUTHORITY

FORM AND LEGALITY
APPROVED:
Law Department

FEDERAL TAX I.D. OR
SOCIAL SECURITY NO.

By: _____

[END OF SOLICITATION]

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